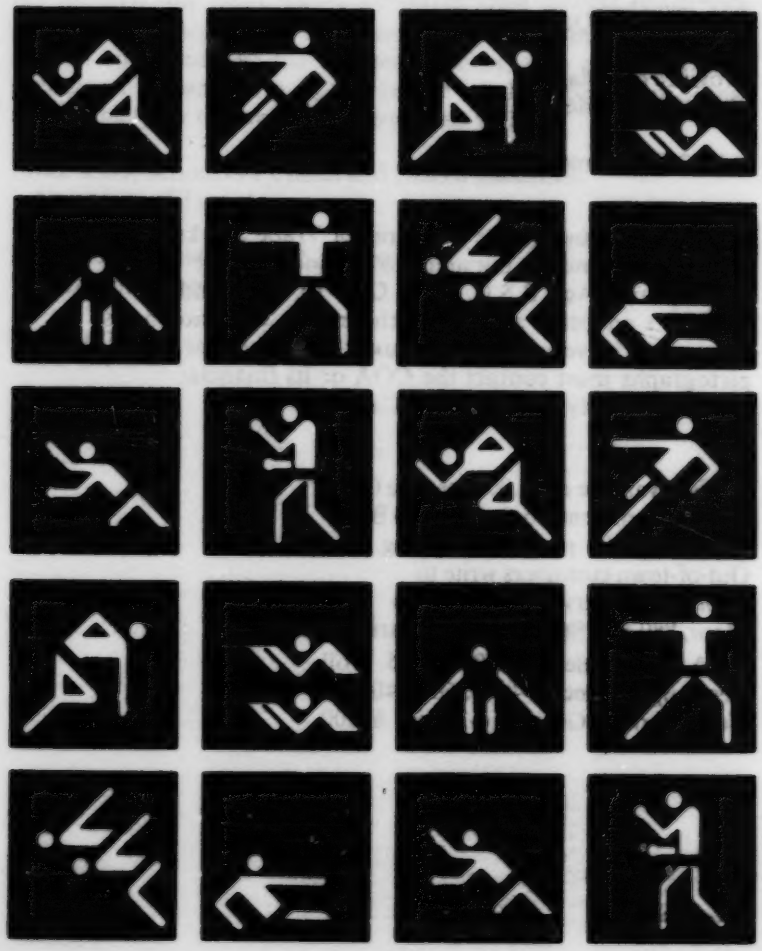
ATHLETES' RIGHTS IN CANADA

by BRUCE KIDD and MARY EBERTS 1982



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May 1982

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THE CASE FOR ATHLETES' RIGHTS

On August 25, 1978, two members of the Canadian Swim Team competing in the World Championship in West Berlin, decided to go out for a quiet dinner together. It was almost the end of a long and successful season. For the last eight weeks, ever since they had made the team at the national trials in Regina, they had lived away from home, in close proximity to the other 38 team members, under conditions of great stress and the glare of publicity — first at a special training camp in Thunder Bay, then in Edmonton at the Commonwealth Games, and then at the Worlds. Each was looking forward to one more race in the two remaining days of the championships.

It had been a satisfying season. One had won a gold medal at the Commonwealth Games and set a new Canadian record at the Worlds. The other had won a bronze at the Commonwealth Games. Their team had beaten the Australians for the first time in the history of the Commonwealth Games and had raised the public reputation of Canadian swimmers to a new high. The night out gave them a chance to see something of the city and a change from the dining room where they had eaten every meal for the last seven days.

They chose a good restaurant several kilometres from the hotel, ordered carefully, and spent two hours at the meal. Each of them had one beer with his food. They returned to the hotel by taxi, but by the time they reached their rooms, they were five minutes late for the 9:30 p.m. curfew set by the head coach. An assistant coach met them in the hall and questioned them. An hour later, the head coach entered their rooms and told them, without explanation, that they had been

suspended and would be sent home at 5:00 a.m. the following morning. Giving neither a chance for reply, he then locked them in their rooms. They tried to phone out, but found that their telephones had been cut off. The next morning they were sent home, without even a word to teammates or to the captain who had been accustomed to act as a mediator between athletes and coaches.[1]

In Toronto, *The Globe and Mail* headlined that they had been "sent home for drinking and breaking curfew" and published their photos. In the story, the head coach said that they had "let the team down" and had "screwed around". Not a single word was published in their defence.[2]

After they returned to Canada, the suspended athletes sought to have their case reconsidered. "In the courts of law," one of them wrote to the Canadian Amateur Swimming Association, "an individual has the right to defend himself. We were not given that right." The CASA, however, ratified the suspensions without a hearing because "board members believed that the coach must enjoy complete authority over the direction of the team."[3]

Although they did not know it at the time, the athletes could have sought relief against the CASA in court, and chances are they would have won. In a number of cases involving private, voluntary associations like sports governing bodies, the courts have held that an association must afford a member the protecton of "natural justice" before suspending or expelling him or her.[4] The requirements of "natural justice", sometimes popularly referred to as "due process", were defined in one case as follows:

> First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith.[5]

In the case of *Fisher* v. *Keane*, in which the circumstances were similar to those in which athletes have been involved, a club member's suspension was overturned in court because the club did not give him the chance to defend himself. The judge, Jessel, M.R., stated:

> They ought not, as I understand it, according to the ordinary rules by which justice should be administered by committees of clubs, or by any other body of persons who decide upon the conduct of others, to blast a man's reputation forever — perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct.[6]

In a similar case, *D'Arcy* v. *Adamson*, Warrington, J. took the view:

> The committee of a club and all similar bodies were in a quasi-judicial position. The power of expulsion was a highly penal power, the exercise of which might inflict a stigma upon an individual, the results of which it was impossible to foresee, and it was an essential condition of that power that the accused person should not be condemned and punished.[7]

The procedures of "natural justice" have been insisted upon, even where they are not required by an association's rules. In the case of *Beland* v. *L'Union St. Thomas*, Rose, J. held:

> Although no rule may have been violated by not giving him notice of the intention to move for his expulsion, and although the action of the society may have been *bona fide* and nothing appears to justify any question as to *bona fides*, yet, in my opinion, the expulsion without notice was contrary to natural justice and the resolution declaring it null and void.[8]

In fact, in *Kennedy* v. *Gillis et al.*, Chief Justice McRuer of Ontario quoted with approval the following important passage from an earlier English case:

> Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must, for instance, observe the principles of natural justice. They must give the man notice of the charge and a reasonable opportunity of meeting it. Any stipulation to the contrary would be invalid. They cannot stipulate for a power to condemn a man unheard.[9]

At one time, the procedural safeguards of "natural justice" were held by courts to apply only to bodies making decisions affecting recognized rights. Bodies dealing with what the law considered to be privileges or benefits did not have the obligation.

More recently, it has begun to be recognized that procedural protections are often as important where some kinds of benefits are involved. Such procedural protections, known generally as the requirements of "fairness", can be very similar to those of natural justice described above. Many of the interests of athletes that we wish to describe would be called (in the strictest sense) benefits or privileges. We therefore use the term "fairness" with the term "natural justice" wherever possible.

It is unclear whether an athlete could successfully sue for damages, other than out-of-pocket expenses, if the athlete was deprived of a prestigious competitive opportunity without the benefits of "natural justice" or "fairness". No cases have been heard on which an analysis could be based.

Until very recently it could be argued that an athlete is an amateur who "participates and always has participated in sport without material gain" (the previous Olympic eligibility rule). The athlete, therefore, could not claim economic loss as a result of an unfair disciplinary action. Since 1974, however, the Olympic eligibility rule allows athletes to accept training, competitive allowances, and "prizes won in competition within the limits of the rules established by the International Federations".[10]

In many sports, Canadian athletes now receive federal and provincial living and training allowances. In skiing and track and field, athletes may now accept endorsement and prize money, as long as the money is put into a trust fund under the administration of their national sports governing body, until they retire from competition. If the trend to professionalism continues, an athlete may soon have grounds for economic damages. In addition, a recent judgement in a case involving mental distress caused by breach of contract may have established more liberal grounds for determining damages that might be used by athletes.[11]

In some circumstances, an injunction may provide a more effective remedy than damages. In a case involving professional sport, *Sheddon v. Ontario Major Junior Hockey League et al.*, the High Court of Ontario issued a temporary injunction stopping the player's suspension, thereby allowing him to compete until the league had complied with the procedures of "natural justice". Mr. Justice Reid reasoned:

> In the case before me it is possible that Sheddon may have no cause for action against anyone for damages resulting from what may be held to be an unwarranted interference with his right to pursue a lawful vocation, yet there can be no doubt that if the intrusion is held to be unwarranted he will have suffered an injury. An injunction would, therefore, appear to be the only remedy.[12]

Unfortunately, the recognition or potential recognition of athletes' rights by Canadian law has not always meant that these rights have been respected in practice. In many recent cases, sports governing bodies have taken away athletes' privileges and benefits without affording them any of the protections of "natural justice" or "fairness":

In 1975, three members of the national speedskating team were sent home two weeks before the world's championships, allegedly for "drinking".[13]

In 1976, on the eve of the Olympic Games, the national ski-jumping team was disbanded, allegedly for "drunkenness, cursing in public and chasing women".[14]

During the Montreal Olympics, one track and field athlete and six swimmers were suspended from the Canadian team and sent home — for concealing a non-athlete in the Olympic Village and for drunkenness, respectively.[15]

In 1978, a member of the national wrestling team lost his opportunity to compete in the World Championships because the coach alleged he "lost badly" in the Commonwealth Games, where he had, in fact, won the silver medal.[16]

Suspensions of this kind have not been limited to national teams.

In 1978, five members of the Ontario Junior Tennis Team were sent home from the national championships for "disciplinary" reasons before they completed their events.[17]

In 1980, a volleyball player was suspended from a university team because he refused to cut his shoulder-length hair.[18]

In 1981, two members of the Ontario junior handball team lost their Ontario Athletic Assistance grants, allegedly because they did not attend a sufficient number of practices.[19]

In the same year, two athletes were suspended for six months by the Ontario Blind Sports Association, allegedly for "breaking curfew."[20]

Common to all of these cases is that athletes lost significant benefits and suffered public humiliation without having been found guilty according to the standards of "natural justice" or "fairness". In most of these cases, the association had no rules requiring fair procedure in discipline or suspension. The Canadian Amateur Wrestling Association does have a procedure for withdrawing athlete's benefits, but did not follow it in the case mentioned, nor did it inform the athlete of his right to appeal. It is difficult to avoid the conclusion that there is little protection of basic civil rights in the system of Canadian sports administration.

There is a widespread belief among national and provincial sports governing body decision-makers that athletes enjoy few, if any, rights. The Canadian Amateur Wrestling Association justified its coach's decision to overturn the results of a national trial, in language that leaves no room for consideration of athletes' rights:

> Any Coach must have the right to select the best team available for any given competition based on the athlete's performance, physical condition and attitude. If we were to take this right away, then there would be no need for a Coach.[21]

Such sentiments are not new, but they have hardened in the course of the structural changes in Canadian sport over the last decade. In 1970, in his *Proposed Sports Policy for Canadians*, Health Minister John Munro spelled out one primary goal for federal sports policy: improved Canadian performances in international competition. Since then, a number of new federal and provincial programs have been created to achieve this result.[22]

Such a goal is commendable, but as federal sports planners increased their demands on the sports governing bodies to "produce winners", they abandoned the belief that sport provided developmental opportunities and intrinsic rewards for athletes.

Gone, too, was the notion that athletes had any autonomously determined needs and interests that ought to be taken into account.[23] Statements by Sport Canada officials that Canadian athletes are "quitters"[24] and "deadwood... who abuse the system"[25] implied that athletes do not deserve any rights, and encouraged production oriented executive directors, coaches and sports scientists to treat athletes as workers who have little or no control over their own activity.[26]

These attitudes have been reinforced by a) federal budget cutbacks which (accompanied by an increasingly conservative climate of thought) have encouraged sport bureaucrats to tighten financial controls; b) the switch in corporate funding from philanthropy to sponsorship which has increased the sports body's desire to control athletes in the interest of "selling" its sport.[27]

Athletes, too, have come to accept the denial of their rights. They have been encouraged to believe that the concept of rights is incompatible with the pursuit of excellence. As one perennial national champion told us,

> The vocabulary of "excellence" in this country is always one of sacrifice and self-denial. You are constantly told, and most of us have come to believe, that if you want to be the very best, you have to be tough at all times, and that means never taking the easy way out. Somehow, the idea of athletes' rights sounds like the "easy way out". If we ask for our rights, it will mean that we have lost the will to win. I don't think this is right — I've learned that athletes' rights are very important — but the feeling that they are just an excuse for failure is very strong.

These feelings are also part of the changing environment for high performance sport in Canada. Prior to the Montreal Olympics, Canadian athletes were accustomed to question administrative power. In 1975, under the leadership of Abby Hoffman, they even took collective action to increase their living allowances.[28] With the retirement of that generation of athletes, and the waning of youth activism generally, the impulse for athletes' rights has been weakened. But that does not mean their importance has been lessened.

A. The Purpose of the Study

The purpose of this study is threefold — to identify the rights of athletes, examine the extent to which they are now protected, and to make appropriate recommendations in two sensitive areas of decision-making: selection, or the awarding of benefits; and discipline, or the withdrawal of benefits.[29]

The decisions around selection are probably the most difficult ones that sports governing bodies ever have to make. The stakes are very high. A team's performance may affect an association's public standing and its chances for fundraising, as well as the careers of coaches and technical directors.

Deciding who should be selected often requires complex judgments about the basis of athletic performance. In team sports, selectors must consider not only skill and tactical knowledge, but temperament and the ability to respond to the stress of high-level competition under unfamiliar conditions. The difficulty is usually increased by an abundance of outstanding and deserving athletes.

But the stakes for the athlete are equally high. Selection can mean improved performance, the rewards of self-satisfaction and increased status, new opportunities for income and employment, and the pleasures of travel. Rejection can retard a promising career and lead to bitter frustration.

The decisions about discipline are complex as well. Sports governing bodies have an understandable concern that athletes deport themselves in a responsible and sportsmanlike fashion. (This applies especially to the highly-visible members of representative teams.) For this reason, many associations have established codes of behavior to govern members' conduct, and have disciplined or suspended athletes for violation of these rules.

But from the individual athlete's viewpoint, there are other considerations. Athletes want to compete at their best. Sometimes the rules governing athletes' behavior off the field (however well-intentioned) prohibit or disrupt activities in which the athlete engages for the very

purpose of competing at his or her best. Rules governing rest patterns, the consumption of alcohol, and sexual activity are often cited by athletes as unnecessarily restrictive.[30]

The task of drafting and enforcing team rules is complicated by the fact that there are often significant differences in the age, experience, and maturity of the athletes on the team.

It is our concern that in both areas of decision-making, the interests of the association as a whole are balanced with a respect for the rights of individuals. The study has two premises. First, the rights of athletes, as citizens and landed immigrants, cannot be diminished because they are members of sports teams. Canadian sports programs must be consistent with the standards of fairness established by Canadian law. "Excellence" at the cost of basic civil rights is simply not excellence.

Secondly, a just system of sports administration is infinitely preferable to recourse to the courts. In each of the cases already cited, the legal requirements of "natural justice" or "fairness" are solidly enough established that any of the suspended athletes would have had a good chance of success if he or she had challenged, in court, the sports governing body's methods in coming to its decision. But a successful judgment after the fact cannot restore the lost opportunity to compete in an important event. It cannot erase the embarrassment of being publicly branded irresponsible. If athletes have cause for taking their associations to court, the cause should be eliminated.

The data for this analysis have been drawn from a survey of the national and Ontario sports governing bodies in the Olympic sports. The survey was not exhaustive; only 20 national and 16 provincial association representatives responded to our questionnaire, or agreed to an interview. We did not systematically seek out examples of injustice by interviewing active and retired athletes. For these reasons, we cannot say exactly how widespread a particular practice is. It should not be necessary to document every infringement of athlete's rights to demonstrate that a problem exists; a single case of injustice is cause for concern. Some representatives we interviewed had neither considered nor could supply answers to our questions; this fact is also cause for concern.

We have sought to document every problem we uncovered by examples from the sports governing bodies we surveyed. Although we are often critical, our purpose is neither to blame nor to praise, but to provide general guidelines for the protection of athletes.

Our recommendations carry no official weight but they enjoy the support of a wide range of athletes, sports governing body executives, and public officials. The bulk of our recommendations have been

directed to government, for reasons of principle and strategy. First, athletes' rights should be a matter of public policy. Secondly, governments can effect change much more quickly than can individual campaigns waged at the board level of each sports governing body.

One final introductory comment: although the focus of this work is on the rights of athletes, it should be clear that other participants in the Olympic sports (especially coaches and team managers) also have rights and every effort should be made to protect them.

A FRAMEWORK FOR ATHLETES' RIGHTS

In Canada, the legislatures and courts have established certain rules or laws to govern the behavior of individuals, groups, and organizations, including governments. Those rules that protect individuals, or confer upon them some benefit, are popularly referred to as "rights". Sometimes they are referred to as liberties or civil liberties. Chief Justice Laskin of the Supreme Court of Canada has identified four kinds of civil liberties: political, economic, legal, and egalitarian.[31]

Unfortunately, even with the coming into force of the *Canadian Charter of Rights and Freedoms* in April 1982, it is still the case that there is no single, readily accessible statement of what our civil liberties or rights are at any given time. They are found in many sources — in the charter, provincial bills of rights, federal and provincial statutes, and the precedents established by court decisions. Not all of these precedents may have been reported in published documents. A particular right may be changed at any time by a new law passed by the legislatures, or a new interpretation by the courts. And the extent of individual rights may vary from case to case. Generally, the more serious the penalty, the greater the procedural safeguards.

In addition to legal rights, Canadians enjoy a complex network of social and political protections. These include elected governments, ministerial responsibility, a responsible civil service, and the practice of the press and the media to criticize and voice complaints.[32]

When we speak of "athletes' rights", we refer to those benefits and protections the legislators and the courts have recognized as belonging to individuals who are members of athletic organizations and recipients of government sport services, or to individuals in similar

positions. The latter phrase is important, because in the absence of a clear statute that enumerates all the rights an athlete enjoys, we have to look for them in various places.

The sources for athletes' rights are similar to the sources for civil liberties generally.

There is common law, developed in Canadian and English courts over hundreds of years. For the most part, the requirements for "natural justice", or "fairness", in disciplinary proceedings are drawn from the common law, although statutes also play a role.

There is contract law, which is based on statute and precedent. The legal basis for an unincorporated sports governing body lies in contract law. The terms of the contract are the rules of the association and, also, are to be implied from the objects of the association.[33] Contract law is also applicable to the formal agreements between athletes and sports governing bodies established under the Canadian Athlete Assistance Program.

There are federal and provincial statutes governing the incorporation of associations without share capital — that is, non-profit associations like the sports governing bodies — and court decisions interpreting these statutes. The Ontario *Corporations Act*,[34] for example, compels incorporated Ontario sports governing bodies to follow certain procedures in passing rules for "the suspension and termination of memberships".

There are federal and provincial statutes governing sport, such as the *Fitness and Amateur Sport Act*,[35] the Ontario *Athletics Control Act*,[36] and the *Ministry of Tourism and Recreation Act*,[37] and the regulations established under these acts.

There are also the general enactments governing people's rights, such as the *Canadian Charter of Rights and Freedoms, Canadian Bill of Rights*,[38] the Ontario *Statutory Powers Procedure Act*[39] and the Ontario *Ombudsman Act*.[40]

In many cases, we have had to consider the rights people enjoy in comparable situations, since the precise circumstances of athletes have not been addressed by lawmakers. The requirements of "natural justice" in disciplinary proceedings, for example, have been drawn from the rulings in cases affecting voluntary associations like the sports governing bodies.

Athletes enjoy rights in other capacities, as taxpayers, tenants, employees, and so on, but these will not be discussed here.

There are several general principles that, in our view, ought to guide the statement of athletes' rights. These are "the rule of law", the principle of conformity to the law, the principles of sentencing, and

"natural justice" and "fairness".

A. The Rule of Law

The "rule of law" states that the conduct of human societies must be based on established rules, not discretionary decisions. In its most famous formulation, the British constitutional scholar, A.V. Dicey, wrote:

> It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law and by the law alone; a man may with us be punished for a breach of the law, but he can be punished for nothing else.
>
> It means again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts; the "rule of law" in this sense excludes the idea of any exception of officials or others from the duty of obedience to the law which governs other citizens. . . .[41]

The first branch of this formulation has been elaborated on by Mr. Justice Rand in the celebrated Supreme Court of Canada decision of *Roncarelli v. Duplessis*:

> In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.[42]

If people can be judged only according to the law, they must know exactly what it means and what its limits are. Accordingly, the "rule of law" also means that laws must be stated with clarity, that the limits of the law are clear, and that the source of the law is a proper authority or legislative body. Chief Justice McRuer of the Ontario Supreme Court, in his *Royal Commission Inquiry into Civil Rights*, stated these ideas in

terms of the goals of an ideal legal system:

1. All rules of law are stated as general rules and are exhaustive. By exhaustive we mean that at any one time all occasions for action by the organized community forces and the nature of their action are stated.
2. All rules of law are stated only by a legislature.
3. All rules of law are stated with such clarity of language that no difficulty arises in their application to particular states of fact.[43]

In effect, the sports governing body is a legal system for a particular sport. The annual general meeting corresponds to Parliament or the legislature. The board of directors corresponds to the executive branch of government or the cabinet. The ethics or disciplinary committee corresponds to the judiciary. In many sports governing bodies, the executive and judicial functions are combined in the board of directors. Like governments, sports governing bodies are bound by the "rule of law". This imposes on them two sets of guidelines: procedural guidelines, which stipulate that certain procedures must be followed; substantive guidelines, which stipulate that the content of the rules must conform to certain principles.

The procedural guideline that flows from the "rule of law" is that all rules (including those governing selection and discipline) must be passed by the legislative apparatus established under the sports governing body's constitution. In most cases, the apparatus is the annual general meeting. This practice is required by both common law and statute. In cases where actions by sports governing bodies have been challenged in court, for example, the court will seek to determine whether the action in question was taken according to a rule that had been properly passed.[44]

In the case of associations incorporated under the Ontario *Corporations Act*, boards of directors may announce rules governing the suspension or termination of membership or of a category of membership. The rules, however, must be approved by the annual meeting, or a special membership meeting convened for that purpose within one year, in order to be valid.[45]

This procedural safeguard is necessary for two reasons: 1. so that athletes and other members of sports governing bodies will have access (usually through the election of club representatives) to all decisions affecting their behavior in the organization; 2. so that the rules they must obey cannot be passed without their knowledge. While there is no guarantee that every athlete will know every rule, this procedure gives athletes an identifiable authority for the rules.

Several important substantive guidelines also stem from the "rule of law."

I. The Importance of Clarity

The requirements that the rules be exhaustive and clear also protect the rights of individuals. Uncertainty and vagueness in a rule can confer on an administrator an undue amount of discretion. Too much discretion can lead to the infringement of civil liberties.

If someone in authority has the power to interpret a rule to award a benefit or impose a penalty, and the rule is unclear, that person has tremendous power over those affected. Such power might be used to impose behavior not required by the rules. Let's say the rules give a coach unlimited discretion in team selection, for example. The coach then can exploit the uncertainty to require any number of actions, from particular forms of training, to personal favors from the athletes who want to make the team. From the athletes' viewpoint, the uncertainty reduces competition to luck and "politics", and creates stress and hardship for everyone.

In the case of discipline, uncertainty can be just as oppressive. If athletes can suffer a severe penalty for violating a rule about which they are uncertain, the ambiguity almost forces them to restrict everything they do for fear of breaking some aspect of the rule.

For this reason, the American courts have declared that ambiguous or overbroad rules in the area of free speech have a "chilling effect" and constitute unjust interference with civil liberties.[46] The same logic led the McRuer Royal Commission to argue strongly against creating undue discretionary power in government legislation.[47] We can apply the argument, by analogy, to the sports governing bodies.

Extensive statements of rules govern athletes' behavior on representative* teams. The most extensive have been established by the agreements between athletes and their associations required by the Canadian Athlete Assistance Program. As we shall argue below, these agreements are governed by contract law. Clarity is an important requirement of contract law. If a particular clause in a contract cannot be understood, the court may well declare it to be void. It will first try to give the clause some meaning, looking at the context and the conduct of the parties. But it will not actually remake the agreement. If the term remains vague, after an attempt at construction, a court might refuse to enforce it. The reasoning is that it would be unfair to enforce an undertaking that cannot be readily understood.[48]

*A representative team is one selected to represent either a national, provincial, or regional sports governing body — or, in the case of the Canada Games, a provincial government.

Rules that are vague or sloppily drafted are potentially oppressive. Therefore one of the major recommendations of this study will be that sports governing bodies review their rules about selection and discipline to eliminate all ambiguity.

II. The Importance of Confining Discretion

Despite the exhortations of legal scholars, it has not been possible for rulemakers in any jurisdiction to state all rules exhaustively. There are two reasons for this. Sometimes legislators possess neither the drafting skill nor a knowledge of all the "occasions for action by the organized community" to which a rule must be applied.

Take the case of selecting members for a national basketball team, for example. It would be impossible for the national association's annual meeting to state how the team ought to be picked in every possible situation. The circumstances affecting selection — the characteristics of available players, the characteristics of likely opposing players, the playing schedule, and so on — vary significantly from one time to another. In this situation, it becomes necessary for rulemakers to delegate some discretion to administrators; in the basketball example, to a selection committee.

In addition, delegated discretion is sometimes desirable in the interests of individualized justice. Most rulemakers in government and in sports governing bodies have given judicial authorities, or tribunals, discretion in the sentencing of offenders. Thus the decision-makers can take the circumstances of the specific situation into consideration. Circumstances may vary from violation to violation, and offender to offender. It would be unfair to apply the identical sanction in every similar case. As the American administrative law scholar, K.C. Davis, observed in his influential book, *Discretionary Justice:*

> Every governmental and legal system in world history has involved both laws and discretion. No government has ever been a government of laws and not of men in the sense of eliminating all discretionary power. Every government has always been a *government of laws and of men.*[49]

But if too little discretion can create inflexibility and injustice, too much discretion can also create injustice. If administrators have too much latitude in decision-making, they can unfairly restrict the actions of persons under their power in ways that were never intended. Take sentencing cases, for example. Too much discretion can mean that different people who have committed a similar violation may receive widely different sentences. This is also unfair.[50] Professor Davis has summarized this dilemma:

> Discretion is a tool, indispensable for the individualization of justice. All governments in history have been governments of laws and of men. Rules alone, untempered by discretion, cannot cope with the complexities of modern government and of modern justice. Discretion is our principal source of creativeness in government and in law.
>
> Yet every truth extolling discretion may be matched by a truth about its dangers: Discretion is a tool only when properly used; like an axe, it can be a weapon for mayhem or murder. In a government of men and of laws, the portion that is a government of men, like a malignant cancer, often tends to stifle the portion that is a government of laws. Perhaps nine-tenths of the injustice in our legal system flows from discretion and perhaps only one-tenth from rules.[51]

How can the sports governing bodies minimize the potential injustice inherent in delegated discretion? Chief Justice McRuer and Professor Davis provide useful guidelines. They were writing about different jurisdictions with different legal traditions. Let us consider each approach briefly.

In his *Royal Commission Inquiry into Civil Rights in Ontario*, Chief Justice McRuer gave great emphasis to proper drafting of statutes and regulations as a means of confining discretion. He recommended that lawmakers should not delegate any discretionary power unless it was "necessary and unavoidable" to achieve public policy. Where discretion was "necessary and unavoidable", he recommended that the law state: 1. clear limits to the *scope* of delegated power — that is, what actions the decision-maker may and may not take[52]; and 2. objective criteria (the existence of which can be empirically determined) rather than subjective criteria (where the basis of judgment is purely the opinion of the decision-maker) as the basis for decision.[53]

In case after case, Mr. Justice McRuer recommended that the Ontario government redraft the statutes that conferred discretionary power on ministers, civil servants, and boards and commissions, to bring them into line with these guidelines. He also recommended that "the power should be exercised in accordance with a procedure that is fair and equitable in the circumstances" and that "in all proper cases a right of appeal or reconsideration should be provided as a check on delegated discretion".[54] The Ontario government chose to implement many of these recommendations, redrafting statutes and regulations, passing the *Statutory Powers Procedure Act*, and creating the office of the Ontario Ombudsman.

Professor Davis, writing about the United States, advocated a

different tack. He was much less concerned with the legislative limits to delegated discretion, arguing that administrators should limit themselves. His proposals fall under three headings:

a. *Confining Discretion*: Administrators should voluntarily and publicly state clear limits to the scope of their powers, so that everyone affected will know the likely consequences in every possible circumstance. Davis singled out the police as the agency with the greatest amount of discretionary power in American government. It regularly must decide which of many laws to enforce and how to enforce them. He recommended that police agencies at all levels of government publicly declare what laws they were going to enforce and how they were going to enforce them. They would use the "rule-making procedure" established under the American *Administrative Procedure Act*. Under this procedure, the police would issue a draft statement of its intent to enforce the law, invite comment through public hearings, and then publish a final statement.[55]

b. *Structuring Discretion*: Wherever possible, administrators should publicly state the criteria they will employ in particular circumstances. They would use their previous decisions as precedents and follow the rule-making procedure. Chief Justice McRuer saw the use of legislatively-stated objective criteria as the best means of structuring discretion. Professor Davis placed his faith in open procedures: "Openness is the natural enemy of arbitrariness and natural ally in the fight against injustice. We should enlist it much more than we do."[56] The use of an open rule-making procedure increases the likelihood that administrators will make decisions on the basis of professional judgment, rather than their personal moral code.

c. *Checking Discretion*: All discretionary decisions should be subject to review by — depending on the circumstances — superior officers, legislative committees, ombudspersons, and the courts.[57]

In amateur sport, executives, coaches, technical directors, and team managers are accustomed to make many discretionary decisions. The above concepts are therefore applicable. In addition to considering whether rules are unambiguous, we shall consider whether the delegation of discretion: a) is necessary: b) employs objective criteria for decision; c) is open to public scrutiny; d) is subject to review or reconsideration.

B. Conformity to the Law

The federal and provincial parliaments are said to be supreme, checked only by the jurisdictional boundaries set out by the *Constitution Acts* and the *Charter of Rights*, and by the political

process. But sports governing bodies do not have unlimited powers. They are bound by the statutes under which they are incorporated, and the common law. "It can be assumed," Mr. Justice Lieff declared in *Hanson* v. *Ontario Universities Athletic Association*,

> unless a contrary indication is provided, that a body other than Parliament or a Legislature has no power to pass a by-law, or other form of legislation which is unequal in its operation as between different classes; manifestly unjust; made in bad faith; or which involves oppressive or gratuitous interference with the rights of those subject to it.[58]

According to contract law, contracts cannot be illegal or tend towards unlawful or immoral objects. This becomes relevant where rules have been established in "contracts" between athletes and their sports governing bodies under the Canadian Athlete Assistance Program. A contract that sets out an undertaking that is against the law is itself illegal, and therefore unenforceable.

In the case of *Neville* v. *Dominion of Canada News Company*,[59] a newspaper agreed not to publish any comment, critical or not, about the plaintiff land company, its directors, business or land, in return for a settlement of a debt owed by the newspaper to the land company. The Court of King's Bench ruled that the agreement was contrary to public policy, and this ruling was upheld in the Court of Appeal. The Court reasoned:

> To my mind, for a newspaper to stipulate for a consideration that it will refrain from exercising its rights of commenting upon fraudulent schemes, when it is the ordinary business of the company to comment upon fraudulent schemes, is itself a stipulation which is quite contrary to published policy, and cannot be enforced in a Court of Law.[60]

A more recent case, *Initial Services Ltd.* v. *Putterill*,[61] involved an agreement not to disclose misconduct of matters that, in the public interest, ought to be disclosed. The agreement was held to be against public policy. Unincorporated sports governing bodies (which are governed by contract law) and the contracts signed by athletes under the Canadian Athlete Assistance Program, are affected by these precedents. Their relevance is not merely conjectural. For example, some associations place severe limits on athletes' rights of free speech. It would seem that such rules might very well be unenforceable, given the foregoing principles.

Not all legislation or precedent is applicable to the sports governing

bodies. They do not seem to be bound by the *Combines Investigation Act*,[62] for example. In some provinces, the courts have declared them beyond the scope of human rights legislation.[63] But unless otherwise stated by legislation or the courts, sports governing bodies must be bound by the law.

C. The Principles of Sentencing

In recent years there has been growing debate about the proper purposes of the Criminal Code and the sentencing of offenders. If there was general agreement a century ago about what the criminal law should achieve, there is considerable disagreement today.

Canadians may still share certain fundamental values, such as the importance of individual dignity and well-being, but we differ on many issues of lifestyle and morality, such as the use of alcohol and drugs, the definition of obscenity, and sexual conduct.

Canadians have debated not only what should constitute "crime", but the sanctions, or penalties, that should be imposed on offenders. Deterrence and rehabilitation were once believed to be the main goals of sentencing, and incarceration and probation the primary means to achieve them. Recent social science has raised considerable doubt about whether these goals can be achieved. At the same time, governments have increasingly sought to compensate the victims of crime through the legal process. They have begun to experiment with restitution and community service as alternatives to incarceration.

These debates have been informed by a wealth of scholarly investigation, the publications of federal and provincial law reform commissions, and royal commissions.

It is not our purpose to discuss the disciplinary codes of the sports governing bodies in the light of these developments, although that would be a useful task. But several well-established principles of sentencing are applicable.

First, the rules should clearly state the specific sanctions that apply to any particular prohibited action, or group of actions.

Secondly, the rules should include a statement of the general purposes of sentencing under the code and guidelines to help a coach or administrator mete out sanctions.

Both points are further applications of the concept of confining discretion. If there is to be an approximate uniformity in sentencing, there should be a similar approach. If the sports governing body has a particular philosophy that it wishes to apply in treating violators of its disciplinary code, it should state what it is. If circumstantial factors are to be taken into consideration, they should be directly stated. Such

factors might be the offender's character and previous behavior, whether the offender acted under provocation, and so on. Perhaps the sports governing bodies' annual general meetings cannot draft such statements. Then the coaches and administrators who have the responsibility for enforcing the rules should be encouraged to draft such statements themselves. They should discuss them with those affected, and then present them to the annual meeting. In many Canadian jurisdictions, judges and justices are now regularly participating in sentencing boards and institutes, in an effort to achieve uniformity in sentencing. It is an important example for sport.

Thirdly, there is a well-established principle that the severity of a penalty should match the seriousness of the crime.[64] Concurrently, the individual's safeguards should increase with the severity of the penalty. A person charged with a parking violation, which draws a small fine, can usually expect only a few minutes before a magistrate. Someone charged with first-degree murder, which can bring a sentence of life imprisonment, has the right to a full trial before judge and jury. Both principles stem from the fundamental assumption of liberal-democratic systems of government that the basic freedoms of life, liberty, and property should be strongly protected, and should be removed only in the most serious of circumstances, after the strictest tests have been applied.

The Law Reform Commission of Canada, in its working paper *The Principles of Sentencing and Dispositions*, has followed these principles. They recommend that incarceration or custody no longer be automatically imposed as a form of sentence unless: the offence is a serious one; the offender has been convicted of other crimes; there is some risk that the offender will commit another crime during sentence, unless imprisoned. The Law Reform Commission recommended that the following factors be given weight in deciding against imprisonment:

- the defendant's conduct neither caused nor threatened serious harm to another person or his property.
- the defendant did not plan or expect his conduct would cause or threaten serious harm to another person nor his property.
- the defendant acted under strong provocation.
- the defendant has made or will make restitution or reparation to the victim for the damage or injury which was sustained.
- the defendant has no history of previous delinquency.
- the defendant's conduct was the result of circumstances unlikely to recur.[65]

It is our belief that similar reasoning ought to be applied to amateur sport. First, penalties for rule violation should be graduated according to the seriousness of the violation. Secondly, the penalty of suspension of competitive privileges (equivalent to imprisonment for an athlete) should be reserved for only the most serious violations.

Principles of punishment from another area also pertain to the situation of athletes. In the case law affecting employment, the courts have set clear limits on the right of employers to dismiss an employee summarily for a single mistake or a single instance of misconduct. The test is whether the alleged misconduct of the employee was such as to interfere with the safe and proper conduct of the business.[66]

A parallel test ought to be developed for misconduct in sport. Athletes should not lose their opportunity to compete because of a single instance of proven misbehavior, unless that misbehavior clearly endangers the conduct of a competition, or the person or property of anyone involved in a competition. We argue that, clearly, the consumption of alcohol, curfew violations, prankish removals of Olympic flags and "not trying" do not fall into this category. In fact, the majority of suspensions meted out in recent years were prompted by "off-field" behavior.

D. Natural Justice

We have already discussed the procedural requirement that follows from the "rule of law": in associations like amateur athletic organizations, rules must be approved by a legislative authority.

Several other important procedural protections are established by the requirements of "natural justice". The courts have declared that members of voluntary organizations, like the sports governing bodies, should enjoy the rights of "natural justice" in cases of discipline. In the case of government programs like the Canadian Athlete Assistance Program and the Ontario Athlete Assistance Program, these rights could be protected by statutes like the Ontario *Statutory Powers Procedure Act*, or by common law, or the *Charter of Rights*.

For example, a recent case involved a municipal police authority's dismissal of a probationary constable. The Supreme Court of Canada ruled that a public authority not bound by the *Statutory Powers Procedure Act*, or the strict requirements of "natural justice", is nevertheless bound by the standards of fairness. In this case, the constable claimed that he had been fired without being told what he had done wrong and without being given a chance to give his side of the story. Chief Justice Laskin wrote:

In my opinion, the appellant should have been told why his services

were no longer required and given an opportunity, whether orally or in writing as the Board might determine, to respond. The Board itself, I would think, would wish to be certain that it had not made a mistake in some fact or circumstance which it deemed relevant to its determination.[67]

After this decision, the Ontario Court of Appeal ruled that a mother on a family benefits allowance was entitled to the requisites of "fairness" from Ontario Housing Corporation, before the corporation took steps to evict her from her low-rental apartment. The court reasoned that the corporation's action would deprive her of her tenancy, "a very real and substantial benefit" that she had acquired because of her reliance on, and eligibility for, welfare. She was to be advised of the corporation's case against her and permitted to give an answer to the body making the decision. She was also given a safeguard against "improper bias".[68]

The importance of fairness has been well established. The first requirement of "natural justice" is fair procedure. Just what constitutes "fair procedure" in every case is not clear, however, and differs according to the circumstances. In common law cases affecting voluntary associations, the courts have insisted that individuals have the following rights: the right of notice of the case to be met, the right of notice of hearing, and the right to a hearing. But the courts have allowed association tribunals to decide whether they will extend the right of representation, and the right to cross-examine witnesses.[69]

In the case of some kinds of action by statutory tribunals, the procedural requirements may be much stricter. The Ontario *Statutory Powers Procedure Act* allows for: the right to representation, the right to call and cross-examine witnesses, the right to a written decision, the right to a record of the hearing, and the right of appeal.

In the case of sports governing bodies, the possibilities for "natural justice" or "fairness" are often complicated by the demands of the sport. At a world championship or major competition, it may be necessary to make a disciplinary decision very quickly. The number of officials available to make the decision may be limited. These factors must be taken into consideration when we examine the extent of "natural justice" or "fairness" in disciplinary cases in the sports governing bodies.

The absence of bias is an equally important requirement of "natural justice". Decision-makers must be free from any influence or relationship that would prevent them from acting even-handedly.[70] They ought not to have had any previous dealings with the person or persons whose interests are to be decided, or an economic or family interest that would

favorably dispose them to the person or persons. We would argue from these principles that, in situations where the decision-makers are to be selected from several people, each of whom knows the person or persons whose interests are to be decided, the decision should be taken by those with the *least* amount of previous dealings with the person or persons affected.

We would also suggest that the opportunity to challenge a sports body's ruling is an important part of the fair treatment of athletes. The courts invariably have considered cases in which members of voluntary organizations seek relief from decisions of expulsion and suspension. In an English case, which has been cited as a precedent in Canada, Lord Denning reasoned:

> The jurisdiction of a domestic tribunal, such as the Committee of the Showmen's Guild, must be founded on a contract, express or implied. Outside the regular courts of this country, no set of men can sit in judgment on their fellows except so far as Parliament authorizes it or the parties agree to it. The jurisdiction of the committee of the Showmen's Guild is contained in a written set of rules to which all the members subscribe. This set of rules contains the contract between the members and is just as much subject to the jurisdiction of these courts as any other contract...
>
> ...the power of this court to intervene is founded on its jurisdiction to protect the rights of contract. If a member is expelled by a committee in breach of this contract, this court will grant a declaration that their action is ultra vires.[71]

In another English case, the British Amateur Weightlifters Association claimed that only it had the right to interpret its rules. Lynskey, J. held that

> B.A.W.L.A. is an unincorporated association. It has no legal entity. The relationship between its members is contractual. The contract is contained in, or to be implied from, the rules. The courts must consider such a contract as they would any other contract. Although parties to a contract may, in general, make any contract they like, there are certain limitations imposed by public policy, and one of those limitations may be that parties cannot, by contract, oust the ordinary courts from their jurisdiction....
>
> The parties can, of course, make a tribunal or council the final arbiter on questions of fact. They can leave questions of law to the decision of a tribunal, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the

> courts.... The interpretation of the rules is a question of law which the courts will examine.[72]

It was for this reason that L.W. Downey and Associates, in their *Report of an Inquiry into the Rights of Individuals in Amateur Sports (Alberta)* concluded that:

> by its prohibitions against appeals to the courts and its specifications of the sanctions to be applied if and when individuals do appeal to the courts, the (Alberta Amateur Hockey) Association, in fact, denies hockey players their rights to natural justice.[73]

The courts have accepted jurisdiction, and have insisted that sports associations follow the proper procedures. It is not likely that they will concern themselves with the merits of a particular decision, however, on the basis that the associations are in a better position to judge on "technical" matters affecting the sport.[74] For this reason, and because of the expense and anguish that can be involved in litigation, we believe that sports governing bodies should institute internal appeal procedures for the major decisions affecting an athlete's career: team selection, awards, and suspension. Our reasoning here follows that of Chief Justice McRuer in his Royal Commission report:

> The advantages of an appeal far outweigh any disadvantages that may arise through expense and delay. An appeal from a tribunal of first instance to an appellate body should bring a reconsideration of the decision by a more expert body. It promotes a uniformity in jurisprudence and practice. The mere existence of the right of appeal has a strong disciplinary effect on tribunals of first instance.[75]

The procedures of "natural justice" including the right of appeal, are usually only associated with cases of discipline or the withdrawal of benefits. Following Chief Justice McRuer, however, we will apply them to selection or the awarding of benefits as well. Specifically, in examining selection, we will consider: whether there is fair procedure, the absence of bias, and the right of appeal.

Being selected for team membership, or a training opportunity, or a grant, may not be considered a right of every athlete, in the strict legal sense of the word. These would more likely be regarded as privileges or benefits. The common law, however, seems to require that depriving someone of an important benefit, once acquired, must be done "fairly". We would also recall the conclusions of Mr. Justice McRuer in his Royal Commission of Inquiry into Civil Rights. He reasoned that no hearing is required where, say, a licence or welfare are granted in the first instance, but that a hearing should be required where the initial

decision is to refuse the benefit.[76]

In team selection, or the allocation of other important benefits, we point out that someone is nearly always being denied the benefit in order that someone else may have it. Accordingly, the whole process should, to the greatest extent possible, be infused with the principles of fairness and rule of law discussed above.

We can now briefly summarize the approach we will take in considering selection and discipline in the sports governing bodies.

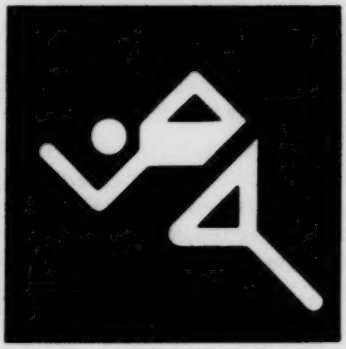
Recent campaigns for athletes' rights have focused almost exclusively on the procedural protections of "natural justice". In 1980, Canadian swimmers at the national level were successful in establishing new procedures for disciplinary cases on representative teams (see Appendix I).

In 1978, the Athletes' Advisory Committee (AAC) of the United States Olympic Committee (USOC) sought to establish a clause in the *Amateur Sports Act* that would guarantee an athlete's right to compete, unless the athlete had been convicted of a rule violation according to the procedures of "due process". The proposed "bill of rights" (see Appendix II) gave the athlete the right to obtain a court injunction to protect the right to compete if the proper procedures had not been followed. Although the opposition of the National Collegiate Athletic Association (NCAA) effectively killed the "bill of rights" for all American sport, the AAC did achieve procedural protections for athletes in sports governing bodies affiliated with the USOC.[77]

Both campaigns made important advances, yet neither dealt with the content of the rules governing an athlete's behavior.

It is our intention to examine Canadian practice according to not only the standards of "natural justice" or "fairness" but also to the "rule of law" and the other substantive protections of civil rights that we have discussed in this section.

Procedural protections are extremely important, to be sure. But if the rules are carefully drafted, and if the discretion conferred on executives and coaches is carefully confined, the need for procedural protections will be reduced. If the power to suspend competitive privileges is reserved for those actions that significantly disrupt a competition, then the effect of a "right to compete" statute will be largely achieved.



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ATHLETES' RIGHTS IN SELECTION

A. Team Selection

The sports governing body's goal in team selection is to choose the best possible team in a manner consistent with "fairness". But several prominent coaches and administrators told us they often face a dilemma: a trade-off between "fairness" and "performance"; they said it is not always possible to be fair and still choose the best team. Some of the most memorable controversies in sport revolve around this trade-off. We appreciate the extreme complexity of selection decisions, but we believe that the necessity for trade-offs has been overstated. In this section, our primary concern is that every athlete is treated equitably. But we do not believe we have sacrificed "performance" in the process.

There are several distinct components to the selection decision. It is important to distinguish the *procedures* by which selection criteria are established from the *content or substance* of the criteria, and from their *application* to a particular group of athletes. The determination of the criteria is a legislative function. This should be the responsibility of the annual general meeting or someone delegated by the annual general meeting. The application of the criteria is a quasi-judicial decision. This should be the responsibility of a selection committee.

To determine the extent of athletes' rights in the different aspects of team selection, we considered four questions:

1. Were the selection criteria established by the rules?

2. Were the selection criteria clear and concise? In cases where selectors were granted discretionary powers of decision, was their discretion sufficiently confined?

3. Are athletes protected from bias?

4. Do athletes enjoy the right of appeal?

Let us consider each of these questions in turn.

I. Were the selection criteria established by the rules?

Ten years ago, most sports governing bodies fielded representative teams in one or two events a year — a major quadrienniel event like the Olympics and perhaps a world championship. Selection to these teams represented the highest honor and opportunity in the sport. Individual clubs jealously guarded their right to be consulted on the content of criteria. Selection criteria were passed at the annual general meeting. This practice ensured the widest possible debate and dissemination of information.

But this situation has radically changed. Today there are many more competitions in which an association may enter teams. In 1981, for instance, the Canadian Amateur Swimming Association sent its best team to a tri-meet in Europe and a dual meet in Japan. It sent its second team to the World Student Games, and smaller groups of athletes to several other international events. In addition, some associations allocate other benefits such as invitations to special training camps.

As the number of opportunities increased, so have the considerations affecting selection. The task of determining criteria for every event has become too large and complicated for the annual general meeting. At the same time, a growing number of national coaches and technical directors have sought responsibility for determining selection criteria. That's because they have the over-all responsibility for the teams that are selected.

In these changed circumstances, athletes' rights are in jeopardy. There is enormous discretionary power concentrated in the technical committees on which national coaches and technical directors sit. Often the same committee defines the criteria and then applies them. If there is no check by the annual general meeting, the technical committee is virtually a law unto itself. Suppose there is no requirement that it announce its criteria well in advance of the related events. Suppose there is no check on it changing its mind. Athletes will be in a quandary about the factors that determine selection.

In track and field, to cite a typical case, both legislative responsibility for defining criteria and the quasi-judicial responsibility for applying them are in the hands of the national coaches. On more than one occasion they have changed their minds about the grounds for selection. This is grossly unfair to the athletes.

If selection is to be made according to the "rule of law", selection criteria must be passed by the annual general meeting or its delegate. If all eligible athletes are to be given an equal chance, the criteria must be announced well in advance of the event to which they will be applied. It may be necessary and unavoidable for the annual general meeting to delegate the responsibility for determining criteria to a technical committee. In such a case, the following guidelines should be applied.

A.1 1. The annual general meeting should delegate the responsibility for determining selection criteria only to an individual or committee qualified to make decisions.

2. The person or committee to whom the responsibility for determining selection criteria has been delegated should publish, as soon as possible, the criteria that have been determined. The criteria for all summer events should be published by October 15 of the previous year; and for all winter events, by April 15 of the previous year.

3. Athletes and coaches should be encouraged to suggest amendments to the published criteria, by submitting in writing, no later than one month after the publication date of the criteria, their proposals and reasons for change. If the person in charge decides, after reconsideration, that change is desirable, this person should publish the amended criteria for all summer events no later than December 1 of the previous year; and for all winter events, no later than June 1 of the previous year.

4. Each year, the board of directors should report to the annual general meeting about the delegation of the definition of selection criteria and the actual selections made.

We recommend that Sport Canada and the Ontario Ministry of Tourism and Recreation encourage the sports governing bodies to determine selection criteria for representative teams according to the above procedures.

II. Were selection criteria clear and concise? In cases where selectors were granted discretionary powers, was the discretion sufficiently confined and structured?

As a general rule, selection criteria should be stated with such clarity of language that no difficulty arises in their application to particular states of fact. Most associations have established a clear trial for selection, but we encountered an undue amount of discretion "kept in reserve."

Almost everyone agreed that the selection criteria should tell athletes well in advance *exactly* what they have to do to make the

team. Yet only one association — the Canadian Amateur Swimming Association — has carried that belief to its logical conclusion, and established criteria that leave nothing to the selectors. Swimmers know exactly what places they will have to win, how fast they will have to swim, in what meets, in order to make the team. In every other sport we surveyed, coaches, technical directors, and athletes told us that, for one reason or another, selection should leave room for discretionary judgments about "intangibles".

It is our belief that much of the discretion that presently remains in selection represents a potential infringement of civil liberties. If coaches and other selectors enjoy any latitude in deciding whom they will select, there is a danger that they may use this power to require athletes to perform actions unrelated to selection. There is also the risk that athletes will be treated unequally.

Much of the potential for injustice that lies in undue discretion can be eliminated by confining and structuring it. In the individual sports, this can be achieved by basing selection strictly on performance in competition. In team sports, it can be achieved by requiring coaches and other selectors to confine and structure their own discretion by publishing clear statements of their basis for selection.

a. Selection by Performance

Today, the primary goal of virtually every sports governing body in fielding representative teams is to compete well in the appropriate competition. There are other goals, to be sure.

At the 1981 quadrienniel meeting of the Canadian Olympic Association, Professor Robert Osborne urged the association to consider the goals of international exchange and Canadian representation in all international events, regardless of calibre, in the preparation of the 1981-1984 budget.

But for most sports governing bodies, these non-competitive objectives are a distant second. Where this is the case, competitive performance alone should be the basis for selection. In individual sports, where each athlete competes alone, it should be possible to devise a competitive test that leaves nothing to selectors. Let us illustrate this claim with examples:

i) *Injury*. Some argue that discretion is necessary to make it possible for the athlete who has dominated his or her event, but who is injured at the time of the trial, to be named to the team. This caution is desirable. But if the decision about what to do is left entirely up to the selectors, without guidelines, it creates uncertainty for all competitors. It may well place the injured champion in an unfortunate position. In 1976, for example, a defending judo champion had given up a year of graduate

school to train full time for the Olympics. He was injured shortly before the trial. His association told him he must compete in the trial if he wanted to make the team. The national coach, a member of the selection committee, told him that his case would be treated with compassion, but that he must compete in the trial. He competed reluctantly, against doctor's orders, and did not make it past the preliminaries. He was not named to the team. He argued that he had been unfairly treated. He felt that he should have been named automatically to the team, or at least given another chance to prove himself. Not surprisingly, the athlete who was selected argued that he had won the trial, and that the selectors' decision should stand.[78]

But the positions could have been reversed. In 1978, the Canadian Track and Field Association announced that it would name the first two finishers in the marathon trial to the Commonwealth Team, but the selectors would decide whether a third entry would be named. The most distinguished Canadian marathoner missed the trial but was named to the team. The third finisher in the trial argued that he could have beaten the other runner, that he finished third in the trial, and should have been selected instead.

What to do? The Canadian Amateur Swimming Association believes that even with the possibility of injury, the sudden-death trial is the fairest. "We feel that if the trial date is well known, a swimmer will make it his business to be in top shape on that day", one board member told us. "We also schedule it close to the major competition for which the team is selected so our athletes won't have occasion to lose their fitness."

While this system is certainly the simplest, we can understand if a sports governing body decides to make some provision for injury. In contact sports like judo, the individual athlete has much less personal control over the incidence of injury. In an endurance event like the marathon, it is not wise to stage the trial immediately before the international event. But the basis for decision in such an eventuality must be clearly spelled out in advance, so that all athletes and coaches know how the rule will be applied. In a combat sport, an injury clause might state:

> If an A card athlete* or a defending national champion is legitimately injured at the time of the selection trial, final selection will be deferred until, time permitting, the athlete can fully recover. Then, at

*Under the Canadian Athlete Assistance Program, athletes are designated A- B- and C- card athletes, according to criteria negotiated between Sport Canada and the sports governing bodies.

a mutually agreeable time, this athlete and the trial winner will compete to determine selection.

In the case of track and field, it might state:

If an A card athlete or a defending national champion is legitimately injured at the time of the selection trial, final selection will be deferred until, time permitting, the athlete can fully recover. Then, at a mutually agreeable or reasonable time, this athlete and the athlete who has been provisionally named to the team as a result of the trial, will compete to determine selection.

If delegation of decision is necessary and unavoidable (as might happen in the case of the marathon) the rules should give the selectors some objective guidelines for selection. For example:

If an A card athlete or a defending national champion is legitimately injured at the time of the selection trial, final selection will be deferred until, time permitting, the athlete can fully recover. Then, at a mutually agreeable or reasonable time, this athlete and the athlete who has been provisionally selected as a result of the trial, will compete to determine selection. If, in the case of the marathon, and the 20K and 50K walks, it is inadvisable or impossible to stage another trial, then the selection committee will determine selection. The basis for its decision should be, in order of priority, the outcome of any races the two athletes have run against each other in international competition, the athletes' relative times in international competition, and their relative fitness at the time of selection.

To be sure, the need for discretion remains in such terms as "legitimately injured" and "at a mutually agreeable or reasonable time". These terms, however, provide an objective guideline for decision, if there is disagreement.

ii) *The Interests of the Association.* Some argue that discretion is necessary to protect the best interests of the association. But unless these interests are carefully spelled out, the effect of this argument is to make the athlete a hostage of the selectors' opinions. That's a predicament the "rule of law" is explicitly designed to avoid. In 1980, shortly after the national championships, the Canadian Figure Skating Association (CFSA) announced its team for the Olympics and the World Championships. It named the national women's champion to the Olympic Team, but passed over her and the runner-up for the Worlds. It named instead a promising 12-year-old who finished third. The male champion was named to both teams. Both the women's champion and

the runner-up were furious. The CFSA defended its decision in terms of the future development of the sport.[79]

This decision was unjust in several ways. In the first place, the effect of the association's decision to "look to the future" was to create a double performance standard for female competitors: most competitors were judged by how well they performed in the 1980 trial, but at least one competitor was judged by the selectors' opinion of how well she might skate sometime in the future.

This is patently unjust. There cannot be one rule for veterans and another for promising youngsters. Given the association's concern for performance, selection should have been based on performance in the year of the competition for which the team was being chosen. An association may decide not to enter a national trial winner in an international competition because she has failed to meet a high performance standard. But if it does so decide, it cannot then enter someone else who has also not met the performance standard.

It may be that an association decides to spread the benefits around, selecting the champion for the most prestigious event, and the runner-up for another event. But in the skating example, that would have meant that both the male and female runners-up would have been sent to the Worlds. There cannot be one rule for males and another for females. Even if the CFSA had decided to send the female champion to both events, the amount of selectors' discretion amounts to an infringement of athletes' rights. The carte blanche CFSA selectors enjoy is neither necessary nor unavoidable.

iii) *Not Enough Places.* Some association executives retain the discretionary power to cut a team for financial reasons. In 1972, for example, the Canadian Olympic Association required the Canadian Track and Field Association (CTFA) to cut ten members from the Olympic Team, thus causing much disappointment and embarrassment. In this situation, problems can arise if the association has to make cuts in widely different events. What to do?

Rather than leave it to the executive's discretion, a sports governing body should make every effort to anticipate such an eventuality, and state the basis for decision in advance. The Canadian Amateur Swimming Association, for example, makes such decisions on the basis of a performance's relationship to the current world list. Such a straightforward rule could not be established in non-measurable sports like judo, gymnastics, or diving. But it is possible to develop a priority list based on the past performances of Canadian (or provincial) representatives in that event in international (or national) competition.

iv) *Pre-selection.* Some sports governing bodies have begun to select athletes for major competitions well in advance of the events themselves. In 1979, the CTFA pre-selected several members of the 1980 Olympic Team. It reasoned that an athlete can "peak" only once in a short period for an optimum performance; therefore exceptional athletes or "automatics" should be spared the necessity and distraction of "peaking" for a trial. In the same year, the Canadian Amateur Rowing Association selected certain athletes for an Olympic training camp in Vancouver. Participation in the camp was tantamount to pre-selection, because crews become set in training.

Pre-selection poses two potential problems for selectors: What if the performance of "automatic" team members falls off after selection? What if another athlete subsequently betters the "automatic's" performance? The questions are not hypothetical. In 1979, the CTFA pre-selected two runners in one event in which several other athletes could run almost as fast. What would have happened if several of them had run faster at the Olympic trial? Only the Olympic boycott saved the CTFA from potential embarrassment.

In our view, the only way to deal fairly with both pre-selected and other eligible athletes is to publish, in advance, rules that will apply to all circumstances. Take the track and field example. If an athlete is pre-selected to excuse that athlete from the necessity of a trial, then that privilege should not be compromised: the athlete should be excused from *any* further selection event. If the association is unwilling to abide by the consequences of pre-selection, then it should require all athletes to compete in selection trials.

These guidelines have two practical implications: the association should never pre-select less than an A-card athlete; no athlete should be selected in any event in which several competitors are closely bunched. In the rowing example, the association should either name the team at the beginning of training camp and stick with that team, *or* declare them provisional crews, and require them to enter a national trial later on.

v) *Performance Measures vs. Placings.* Some sports have been troubled by controversy over the relative weighting to be given performance measures and placings in key events. In track and field, for example, some believe that a runner's worth is best indicated by the runner's fastest times. Others contend it is the runner's placings in major events.[80] The two standards do not always correlate.

In 1976, for example, two athletes dominated one event. One had broken the Olympic standard in a race in the United States, but could never beat her rival. The consistent victor repeatedly failed to meet the

standard. Under the Olympic rule, an association can enter one athlete per event without condition, and up to a maximum of three if each has broken the standard. Whom to send? The problem is complicated by the fact that the standard can be met any time during a twelve-month period. Also, in contrast to swimming, wide variations in conditions exist from meet to meet. The CTFA has tried to overcome these difficulties by establishing multiple criteria and a system of trials. If an athlete breaks the standard and wins the first trial, for example, that athlete is assured of selection. But it still leaves selection in marginal cases to the discretion of a committee.

The existence of multiple criteria should not be an obstacle to the elimination of uncertainty. In poker, players know that a royal flush is always worth more than a straight, which is worth more than a full house, and so on. In the absence of a sudden-death trial, the CTFA should also set out criteria in descending priority. Here, too, fairness decrees that selectors' discretion be eliminated.

vi) *Physical and Physiological Tests.* Some sports governing bodies have tried to identify physical and physiological test measures that predict performance, and therefore might be used for selection. The Canadian Volleyball Association, for example, has developed the "Volleyball Index" of such measures. This index is composed of players' scores for height, vertical jump, flexibility, and a range of running tests.[81]

Setting up the index is a commendable attempt at establishing objective criteria. But the measures should be used with extreme caution. A particular physical or physiological characteristic may dispose an athlete to outstanding performance. There is no guarantee, however, that its possession will enable any athlete to perform better than someone who does not possess that characteristic. Physiological profiles of outstanding athletes are abstractions. They are developed by averaging the characteristics of a large number of athletes. They cannot accurately predict the performance of any individual athlete.[82]

vii) *Psychological Measures.* We were told by several sports governing body representatives, in sports where selectors enjoy considerable discretion, that they place great importance on an athlete's "attitude". Generally, the determination of "attitude" is a matter of intuition, but some told us they were considering psychological tests as an aid to selection.

We have two concerns here. In the first place, the term, "attitude" is so indeterminate that it can become a means of control, of unfairly restricting an athlete's freedom. ("If you don't have the right attitude", a selector might say, "you won't make the team", thus discouraging

athletes from acting in accord with their own conscience or training practices.) Secondly, there is no conclusive evidence that a particular personality profile ensures that an athlete will perform in a desired way.[83]

For both reasons, given the availability of performance tests in individual sports, the criterion of "attitude" should not be used. In team sports, where a player's personality has some effect on ability to co-operate with others, the criterion should be used with caution. In neither case should psychological tests be used as a basis for selection.

b. Confining and Structuring Discretion

There may be circumstances in individual sports that make the conferring of discretion on selectors necessary and unavoidable. Some discretion is certainly necessary in team sports. Even the best athlete's performance is dependent to some extent on the performances of others, so no clear performance test can be devised. In such situations, selectors should limit their own discretion. They should announce (at least to the players who might try out for the representative team) what criteria they will take into consideration in choosing the team. They should state what tests or measures (e.g., performance in league play, performance in training camp, etc.) they will use to determine which athletes have best met the criteria.

For example, if a national coach wants to take a particular strategic approach to a particular tournament and plans to select the players accordingly, then that coach should so indicate to all those affected. Ideally, the coach should announce it well in advance, so that interested players and coaches could respond with counter-suggestions. If convinced by them, the coach could then publish amended criteria accordingly. Selectors ought not to be strictly bound by their guidelines, but if they make any selection on different grounds, they should be required to give convincing reasons for changing their minds.

If selectors were to structure their discretion in this way, the potential for injustice would be significantly reduced. We do not pretend to know the best selection criteria in any sport, but an association's desire for "flexibility" should not override the interests of fairness. For this reason,

A.2 *we recommend that Sport Canada and the Ontario Ministry of Tourism and Recreation encourage the sports governing bodies to formulate selection criteria according to the following principles:*

1. That, as a goal, selection criteria be stated with such clarity of language that no, or minimum, difficulty arises in their application to particular states of fact.

2. That, in individual sports, selection be based on a competitive trial, or a performance standard, or both. Where more than one event or standard is used, the rules should state which criterion has priority. Where some discretion is necessary and unavoidable, the rules should state objective criteria, in order of priority, to provide the basis for selectors' decisions. Where vagueness in the rules gives selectors wide latitude in decision-making, the selectors should confine and structure their own discretion by announcing in advance what criteria they will use in selecting teams, and the tests or measures they will use to determine which athletes best meet the criteria. The criteria should be published sufficiently in advance to permit interested athletes and coaches to respond to the criteria and to permit the selectors, if they deem it desirable, to publish amendments. The final criteria should be published at least six months in advance of selection.
3. That, in team sports, the rules should state objective criteria, in order of priority, to provide the basis for selectors' decisions. Any physical or physiological criteria should be demonstrably related to performance. Where selectors' discretion is necessary and unavoidable, or where vagueness in the rules gives selectors wide latitude of decision, the selectors should confine and structure their own discretion by announcing in advance what criteria they will use in selecting the team, and the tests or measures they will use to determine which athletes best meet the criteria.

The criteria should be published sufficiently in advance to permit interested athletes and coaches to respond to the criteria and to permit the selectors, if they deem it desirable, to publish amendments. The final criteria should be published at least six months in advance of selection.

4. Psychological tests should not be used for selection.

III. Are athletes protected from bias?

In some sports there is only a small number of athletes and coaches participating at the national level. It is thus perhaps inevitable that the potential for bias is considerable. Where selectors enjoy wide discretion, the risk of bias is increased.

In some sports, selectors often coach some, but not all, of the athletes who are trying for the team. In track and field, for example, most of the national coaches who recommend selection for their particular events also coach club teams. In the marathon example we cited earlier, the national coach who sat on the selection committee was also the club coach for the athlete selected for the third place on the Commonwealth

Team.

These circumstances bring forth charges of bias in several sports. Yet there appears to be no mechanism for checking the exercise of bias. In fact, Sport Canada and the Canadian Olympic Association award monies to coaches of nationally and internationally ranked athletes. These incentives may indirectly increase the possibilities for bias,

If selection criteria were stated exhaustively, there would be no need for any check on bias. Although the CASA already awards coaching grants on the basis of athletes' performance, there is no chance for bias. Selection for representative teams is determined strictly by performance.

The only need for a check exists where discretion is necessary and unavoidable. If a strict test of bias were applied, no coach or official who had a personal or professional relationship with any of the athletes trying out for the team should sit on the selection committee.

According to de Smith's *Judicial Review of Administrative Action*, "the courts have often quashed decisions on the strength of the reasonable suspicions of the party aggrieved, without having made any finding that a real likelihood of bias in fact existed."[84]

In an Ontario case, a provincial judge was disqualified from arbitrating a police labor dispute because he sat on a board of police commissioners in another municipality. In giving its ruling, the court stated that it did not doubt the judge's intent to act impartially, but in view of his known association with another police management board, his decisions might be thought to lack impartiality.[85] But if this test was strictly applied in some sports, all qualified selectors would be eliminated.

If all qualified selectors are biased to some degree, it is essential that the least-biased persons sit on the selection committee. It is particularly important to check bias in this way if the national coach personally coaches athletes contending for the team. Bias could also be checked if the athletes elected a retired athlete to sit on the selection committee.

A.3 *We recommend that Sport Canada and the Ontario Ministry of Tourism and Recreation encourage the sports governing bodies to eliminate possibilities for bias in the selection of representative teams, by adopting this guideline:*

In cases where discretion is necessary and unavoidable, persons who have a personal or professional relationship with any athletes contending for the team should disqualify themselves from the selection committee. If all qualified selectors are biased to some extent, the least-biased persons should sit on the selection committee.

IV. Do athletes enjoy the right of appeal?

At present no sports governing body has a formal internal appeal procedure on selection, although athletes have often petitioned the selectors privately. Given the importance of selection to an athlete's career, we believe one should be established. The athlete does have the possibility of recourse to the courts. But even in the unlikely event that the case were to be heard before the event that the athlete was hoping to enter, it is unclear what action would be taken. An internal appeal would be simpler, cheaper, and swifter.

There should be only two grounds for appeal: (1) selection was not made according to the rules; (2) there was a reasonable apprehension of bias or conflict of interest in one or more of the selectors or, if all qualified selectors were biased to some extent, no effort had been made to disqualify the most-biased selectors. Because the existence of appeal is the ultimate safeguard,

A.4 *we recommend that Sport Canada and the Ontario Ministry of Tourism and Recreation add one further condition to the grants they now award to the support of representative teams: that sports bodies establish an internal selection appeal procedure along the following lines:*

1. If selection has been made on a discretionary basis, the selectors should keep a brief written record of the grounds for their decisions (i.e., setting out why some athletes were chosen and why others were not).

2. After the selection has been announced, a representative of the selection committee should be available for a 48-hour period to explain the basis of decision according to the written record. The exact times, locations, and telephone numbers where this person could be reached should be publicized before the selection meeting.

3. If, within 48 hours of the decision, and after speaking with the committee representative, the athlete believes that grounds for appeal exist, the athlete should submit, either orally or in writing, a formal appeal, clearly stating the reasons why he or she should have been selected.

4. There are only two grounds for appeal: (1) selection was not made according to the rules; (2) there was a reasonable apprehension of bias in one or more of the selectors or, if all qualified selectors were biased to some extent, no effort had been made to

disqualify the most-biased selectors.

5. A selection appeals board, composed of two national (or provincial) board members who did not sit on the selection committee, plus an elected athletes' representative who did not sit on the original committee, should consider the athlete's statement, plus a statement from the selection committee representative and make a decision within 24 hours of receipt of the appeal, and notify all parties.

6. The selection appeals board must make one of three decisions: (1) it can grant the appeal and name the athlete immediately to the team; (2) it can order that the selection be reconsidered; (3) it can reject the appeal. If in its judgement, the appeal arose because of vaguely-worded selection criteria, or an unnecessary delegation of discretion to selectors, the selection appeals board should make recommendations for improvement.

It may turn out that, after a successful appeal, there are two athletes on the team for an event in which there is only one entry per team. In this case, the sports governing body might stage a trial. It might also decide to award one of the athletes a different benefit, such as an automatic position on another team. Parallels in other fields might be instructive.

In the university, it sometimes happens that after the appeal of an individual mark, the over-all results of a scholarship competition are changed. At the University of Toronto, the practice is not to take the first winner's award away, but to find another benefit for the student who successfully appealed.

In the field of employment, it sometimes happens that an employee loses his or her job, wins it back in a grievance, but finds it filled by someone else. In this situation, if the employee has to work at a lower position, the board may order that wages be paid according to the former position until a position comparable to the former one becomes vacant.

If established along with our other recommendations, this procedure would be used rarely, but it would function as an essential check. It would give sports governing bodies the incentive to state precise criteria, and employ them evenly. It would also help them avoid the unfavorable publicity that occurs when athletes believe they have been mistreated and, having no other recourse, go to the press.

B. Invitations to International Events

To compete abroad, an athlete must get permission from his or her sports governing body. On occasion, sports governing bodies have refused athletes such permission, on the grounds that the international events conflict with important domestic competitions. Such refusals have often led to charges of interference with athletes' rights.

In 1981, the Canadian Track and Field Association refused two prominent athletes permission to compete in Europe because the national championships were scheduled for the following week. The decision was widely attacked.

In the United States, the Amateur Athletic Union persistently refused to grant travel permits at the time of its national championships and nationally-televised fundraising events. These refusals served to ignite the Athletes' Advisory Committee's campaign for a "bill of rights".

In our view, the requirement that athletes compete in their national championship and other events designated by the sports governing body (and thereby not compete in simultaneous events abroad) is not in itself an infringement of athletes' rights. The national association makes an important contribution to the development of its sport. It has every right, if the decision is made fairly, to ask the best athletes to support that effort by appearing in certain events. As a practical consideration, however, it should make every effort to schedule major events so that individual athletes may also take advantage of other opportunities.

If athletes wish to contest such a policy, they have two means of doing so: (1) by motions at the annual general meeting; (2) in the case of carded athletes who must sign a National Sport Governing Body/Carded Athlete Agreement, by collective bargaining over the terms of the agreement.

It is also our view that the decision by the Canadian Olympic Association not to enter athletes in the 1980 Olympic Games in Moscow falls into this category. Whatever the merits of the boycott, the decision was consistent with the "rule of law". It was taken after a lengthy and open discussion and by a vote of the membership at the annual general meeting.

C. Athlete Assistance Grants

Since 1971, Canadian athletes have been eligible for direct financial assistance from the Canadian Athlete Assistance Program (CAAP). This covers tuition, living and training allowances. Since 1977, Ontario

athletes not receiving CAAP have been eligible for similar allowances under the Ontario Athlete Assistance Program (OAAP).

In each case, government provides the funds and sets out general criteria for selection and the payment of funds. But sport-by-sport criteria and specific nominations for awards are made by the sports governing bodies. In effect, the sports governing body acts as a technical advisor to the grantor, which is government. The two programs are very similar. In fact, the Ontario program was deliberately modelled after the federal program.

We examined the two athlete assistance programs, following the same lines as those we used in considering team selection. Since many points are similar to those we have already raised, we shall limit ourselves to general observations.

The general criteria for these programs are restated annually in guidelines published by the granting governments. There is much less discretion in selection for these awards than in selection for team membership. This is largely the result of efforts by Sport Canada to establish objective performance criteria for awards. The "guidelines for the preparation of selection criteria" published in the 1980 *Guide to the Athlete Assistance Program* set a desirable standard for clarity and fairness:

1. Criteria should be proposed by the NSGB (National Sports Governing Body) Technical Committee, recommended by the NSGB Executive and approved by the A.A.P. Committee for *general* publication within each sport *prior* to the commencement of a sport's "card year".

2. Wherever possible, the criteria should be based upon *objective* results obtained in national competitions (preferably the national championships) or international events.

3. The competition(s) used for objective measurement should be compatible with a sport's national training/competition program and be accessible to the majority of the best athletes in Canada.

4. If subjective measurements must be used, the scoring system and scoring process shall be clearly stated for the benefit of all athletes to reduce any connotation of biased selection.

5. If combined objective/subjective selection criteria are proposed, the maximum points possible to be awarded for objective performance results should equal at least twice the number of points possible through subjective evaluation.

There is one criterion for selection in the Ontario program, however,

that warrants discussion. Under OAAP, to be considered for a grant,

> the athlete must commit to train intensively in pursuit of National Team status or Card status within the federal Game Plan Athlete Assistance Program.

(Under CAAP, the conditions of "commitment" are established after the award is made, in agreements between the athlete and the sports governing body concerned.)

In some cases, sports governing bodies have equated "commitment" with participation in specified training programs. In 1981, a provincial sports governing body rejected an athlete's application for Ontario assistance because he had turned down an opportunity to train with the national team. The athlete, who was provincial champion, informally appealed to the Ontario program director on the grounds that although he preferred to train on his own, he had not given up his commitment to train towards national team status. After a hearing, the director ruled that the athlete had met the criteria and awarded the grant.

Any subjective criterion such as "commitment" should be carefully defined in terms of objective statements of fact, so that no misinterpretation will result. This goal seems to have been largely achieved through the application of the CAAP's selection guidelines.

In the Ontario case mentioned above, the program director should eliminate any future misunderstanding of the "commitment"criterion, by publishing the interpretation established in the test case in the next set of guidelines. The athlete assistance programs must be prepared to accommodate different approaches to training.

There is another point to be made respecting "commitment". Suppose the governments continue to allow the sports governing bodies to equate "commitment to train" with participation in specified events. As we shall argue below, the regime thus established may well be tantamount to a contract of employment. It follows, then, that the minimum wages and standards of work designed to protect the persons in employment relationships should thereby apply.

There is only one matter where further clarification is desirable: psychological tests. Since these tests are not valid indicators of athletic performance, we believe they should be prohibited.

A.5 *We recommend that Sport Canada and the Ontario Ministry of Tourism and Recreation amend their general selection guidelines for athlete assistance to exclude the results of psychological testing as a criterion for selection.*

Neither the federal nor the provincial program has a well-publicized formal appeal for denials of athlete assistance. Given the importance of these awards, and the complexity of some selection decisions, it is essential that procedures for reconsideration be established.

In Ontario, most provincial granting agencies have a built-in appeal process. This is largely a result of the McRuer Commission and legislation implementing its recommendations. The usefulness of the appeal process has been well established. About 10 per cent of all applicants for Ontario Student Assistance Awards, for example, appeal their original grant. About 85 per cent of appeals are granted.[86] If no formal appeal exists, dissatisfied applicants may resort to the Ontario Ombudsman. Similar procedures exist at the federal level.[87]

A.6 *We recommend that both CAAP and OAAP establish formal appeals for athletes who feel they meet award criteria but have not been awarded a grant. The procedure should be as follows:*

1. If an athlete feels unfairly rejected for an award, the athlete should file with the program director, within 10 days of the publication of the awards list, a written appeal, clearly stating the reasons for believing that she or he met the criteria, and any other pertinent information.

2. Upon receipt of any appeal, the program director should ask the chairperson of the relevant selection committee to submit a written statement indicating the grounds why the athlete was not awarded a grant.

3. The program director must notify all parties of the decision within 15 days after the receipt of the appeal.

4. If the appeal is successful, the athlete should be paid the grant retroactive to the beginning of the program year.

Some sports governing bodies argue that the existence of an external appeal interferes with their right to make the major decisions affecting their sport. In the Ontario case that we mentioned above, an official of the sports governing body affected complained that the ministry was "seriously eroding (its) credibility". A more telling point, however, is that CAAP and OAAP are government programs. They are financed by tax dollars. The government officials who have the ultimate responsibility for these programs are responsible to elected legislatures which, in both cases, have established the importance of appeals from administrative decision-making. It is therefore imperative that CAAP

and OAAP be administered in accordance with this policy.

Throughout this section, we have focused exclusively on the individual athlete's rights of appeal. But athletes' opportunities are also determined by the number of "cards" allocated to a sport.

A.7 *We also recommend that sports governing bodies should, on an annual basis, be allowed to appeal the number of cards allocated to their sport.*

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ATHLETES' RIGHTS IN CASES OF DISCIPLINE

A. Discipline and Suspension Under "Contract"

The most comprehensive statements of disciplinary codes for athletes on representative teams are now contained in the formal agreements or "contracts" that sports governing bodies have required athletes to sign as a condition of athlete assistance. Sport Canada insisted that such agreements exist. Examples of such contracts are contained in Appendix III. Since most national team members receive such assistance, these agreements have invariably become a condition of membership on a national team. Under the *Guide to Athlete Assistance Program,* each sports governing body is required to:

> Produce a "Sport Governing Body/Carded Athlete Agreement". This agreement will clearly define the following:
>
> • Sport Canada approved criteria to be used for the nomination of national card athletes;
>
> • training and competitive obligations for the carded athletes;
>
> • any internal administrative policies and procedures;
>
> • any commitments the carded athlete is required to make to the NSGB;
>
> • terms and conditions of card status;
>
> • complete outline of benefits available to the athlete through the Athlete Assistance Program and the NSGB;

- discipline and appeal procedures.

This agreement must be signed by the athlete's national coach, association representative, and the athlete, with a copy available for the athlete.

"This way," CAAP Director Doug Darling explained in *Champion*, "both sides know what is expected of them right from the beginning. And for our part, we'll be able to ensure that our money is being well-spent in terms of NSGBs monitoring and evaluating their athletes, knowing where they are, what they're doing and who they're training under."[88]

Whether Sport Canada intended it or not, these agreements might be considered legal contracts enforceable in a court of law. They not only incorporate rules of behavior that can be effected by other means (such as the annual general meeting), but also create a new mutual obligation. An essential element of any contract is that there be "consideration": some benefit must move from one party to the other, or some detriment must be suffered by one party in favor of the other.

It is clear that in these agreements, benefits are exchanged. The athlete receives financial support and access to training, competition, and equipment. The association receives the athlete's participation, as well as the athlete's adherence to a set of rules designed to enhance the association's reputation. The detriments are also clear. A second element of any contract is the intention by both parties that there be contractual relations. In these agreements, the intention to create legal obligations is expressed by the penalties imposed on athletes if they do not live up to the conditions. In addition, the athletes must sign an agreement if they want to get financial assistance from Sport Canada. Thus the documents arguably have significant legal effect.

We have examined these agreements in the light of the following questions:

1. Are the rules clear and unambiguous?

2. Do the rules conform to the law?

3. Are penalties graduated in accordance with the severity of the violation?

4. Are there well-established procedures of "natural justice" in cases where sanctions are imposed?

Let us deal with each of these questions in turn.

I. Are the rules clear and unambiguous?

We have repeatedly stressed the importance of clarity in documents affecting athletes' behavior. An established principle of contract law is that "the terms of the contract must be certain. An agreement may be so vague or uncertain that it cannot give rise to a binding contract."[89] Vagueness occurs because there is a genuine difference of opinion about the language of the contract, or because it is impossible for the athletes reading the agreement to determine what is expected of them.

Many of the agreements that the sports governing bodies require athletes to sign are unenforceable because of their vagueness. Here are some examples:

- Many agreements (e.g. Canadian Cycling Association (CCA), and Canadian Track and Field Association (CTFA)) state that a member who does not abide by "team rules" will be liable to penalization in certain specified ways. The documents then outline a number of other requirements, but nowhere contain the heading: "Team Rules". It may well be that everybody understands what the so-called team rules are; it may be that the agreement itself constitutes the team rules, but this is not clear. Given the severity of the penalties (withdrawal of allowance and competitive privileges), the athlete needs to be very sure what rules attract what penalties.
- The CCA agreement states that any member "who does not abide by the Team Rules, including the unwritten rules of the past, will be liable to penalization." It is hard to imagine a more vague way of formulating the athlete's obligations. An athlete would have to be not only a historian, but a historian with whom all the CCA officials agreed, in order to understand what this requirement actually meant. Rules of such vagueness are grossly unfair, because they give the sports governing body far more power than is necessary to carry out their objectives.
- Many agreements contain a catch-all statement of obligation. The CTFA and the National Cross-Country Ski Team (NCCST) require athletes to "conduct themselves in a manner that will be beneficial to the team". The CCA and the NCCST require the athlete to "participate to the best of his ability". The Canadian Figure Skating Association (CFSA) requires that athletes "conduct themselves at all times in a reasonable and acceptable manner". The CFSA agreement does define "unacceptable behavior", but not what is "unreasonable". All of these generalized formulations give the coaches and team officials almost unlimited discretion to decide, in the field and without much right of recourse for the athlete, whether the athlete is going to be sent home or

denied some other opportunity because the athlete's behavior is not beneficial, not reasonable, or not up to the best of the athlete's ability.

Sometimes the vagueness is compounded by the fact that it is not clear whether disciplinary action will follow. CCA rules state "a 100 per cent effort is expected in training, and repeated lack of effort can only be interpreted as a lack of interest". Does this mean that lack of effort is anything under 100 per cent effort? What about the athlete's inevitable need for rest and "easy days"? Are these to be interpreted as lack of interest? Does that mean that penalties will be invoked? Or will some other action be taken? Again, the athlete is left at sea as to what to expect. Unless these requirements can be stated with precision, they should not be included in the agreement.

- Many of the agreements prohibit drug use by athletes. Some such prohibitions are sources of uncertainty. The CTFA agreement states that an athlete will suffer automatic suspension for "abuse of alcoholic beverages or drugs". The NCCST agreement provides for suspension for "any involvement with drugs". It also states that "consumption of alcoholic beverages is discouraged". There is wide latitude here for officials to interpret what is meant by "abuse", "involvement" and "drugs". In the case of alcohol, it would be very difficult in the face of such ambiguous instructions, to know exactly how much consumption is allowed, if any. There are examples of clear instructions in some agreements. The CFSA provides "there will be no possession or use of any drug, excluding prescribed medical drugs, which should be registered with the responsible official before the event". Such clarity is desirable in *all* agreements.
- A number of agreements are vague about press relations. The NCCST stipulates that "members should attempt to please the press". The CCA provides that "Team Members must make an attempt to please the press and news people". It is extremely difficult to determine what these directions mean. Pleasing the press may sometimes involve granting interviews at times inconvenient to the athlete or detrimental to the athlete's program. Yet these agreements suggest the possibility that complaints from the press corps to team officials might result in disciplinary action.
- The NCCST requires that a member will not publicly denounce or slander equipment he is using. He should attempt to assist the supplier by good results and exposure. He should attempt to promote the manufacturers if questioned by the public. Team members should familiarize themselves with the products of official suppliers.

The intent of these provisions may be clear: a team member should

not make negative comments about equipment that has been provided by an official supplier. But the use of the technical legal term, "slander", is confusing. At common law, words that merely disparage a person's goods or property, but in no way reflect upon the individual's personal or trading character, are not defamatory. Words that disparage goods may justify a libel action only if they imply carelessness, misconduct or lack of skill on the part of the manufacturer or trader. It is an area of law that is by no means simple. To use the term loosely in this agreement only serves to intimidate.

And what about "fair comment"? Suppose an athlete gave the press a balanced analysis of the strengths and shortcomings of various equipment with which the athlete was familiar. We argue below that one party to a contract cannot sign away her or his right to free speech. Provisions that attempt to prohibit fair comment are improper and should either be reworded or dropped altogether.

- Poorly drafted statements about liability create uncertainty, too.

The NCCST stipulates:

> It is understood and agreed ... that the Association accepts no liability or responsibility for injury or accident to the Program member and he hereby acknowledges the same and agrees to indemnity (sic) and save harmless the Association from claim or demand arising therefrom.

The CCA agreement states:

> Each Team Member is requested to get adequate supplementary medical and hospital coverage through a family policy or on his own. It is understood and agreed as set forth in this clause that the Association accepts no liability or responsibility for injury or accident to a Team Member while he is engaged in his normal duties, training or competition, and the Team Member hereby acknowledges the same and agrees to indemnify and save harmless the Association from any claim or demand arising therefrom.

It may be that the intent of these provisions was to place on the athlete the burden of insuring against injuries to the athlete. The language used, however, appears to go further. A contract of indemnity is one in which a party agrees to save the other from loss. In the strictest sense, the loss would come from the claims of third parties. In the context of these agreements, it might mean that the athlete was agreeing to cover the association in the event of any loss arising if the athlete injured a third party, such as a spectator, in the same accident that injured the athlete. The meaning of the quoted clauses is therefore unclear. It may well be that a court would decide that the athlete could not be bound to indemnify the association against third-party lawsuits,

but it would be unfortunate if the athlete had to engage in costly litigation to clarify this.

Many other examples of vagueness in these agreements could be cited. If the agreements are so vague that the sports governing bodies could not even theoretically enforce them in a court of law, it is extremely unfair that they are presently being applied and enforced by people with no legal training. Doug Darling of Sport Canada has said that the agreements should "clearly define what each can expect of the other". Given the sloppy drafting of so many clauses in the agreements, they are clearly not fulfiling the purpose Sport Canada intended.

B.1 *We recommend that Sport Canada review the Sport Governing Body/Carded Athlete Agreements established under the Canadian Athlete Assistance Program to ensure that the terms of such agreements are stated with such clarity of language that no difficulty arises in their application to particular states of fact.*

II. Do the rules conform to the law?

The courts may refuse to enforce an agreement because it goes against public policy or clearly established principles of law. In some cases, the objects of an agreement have been declared illegal. In others, the objects are "merely discountenanced by the law".[90] In the agreements we considered, there are several terms that might be discountenanced on these grounds.

a. Freedom of Speech

Public policy considerations arise in the case of the prohibitions against athletes making unfavorable statements about officials, or the sports governing body as a whole. We understand these rules are well intended: they are designed to restrain displays of poor sportsmanship, and to give an association some recourse where they occur.

In an extreme case, however, an athlete may wish to speak out publicly about real abuses in the association. Such abuses might be the unfair dismissal of a coach or a fellow athlete, or an improper agreement between officials or judges. Under many present agreements, athletes would risk suspension unless they kept quiet. It can be argued that in the first instance the complaint should be made to the proper officials, and not publicly. However, if an athlete did this and no action was taken, then the athlete might have a legitimate interest in going public.

The case law suggests that if an athlete was suspended under a contractual provision that forbids speaking to the press, a court might well give the athlete relief on the basis that the provision invoked by the

association was contrary to public policy. It is unlikely, however, that athletes would know of the protection they enjoy by virtue of the reasoning in these cases. It is preferable, then, that these provisions be redrafted to restrict what seems to be their concern — poor sportsmanship — and to make it clear that an athlete's right to free speech on serious issues remains intact.

b. The Medical Rights of Informed Consent

Training is a growing source of conflict between the athlete and her or his sports governing body. Under the CAAP, an athlete is required to submit "Annual Training Charts". These usually consist of a statement of the athlete's intended program, with monthly progress reports. Many sports governing bodies are no longer satisfied with the assurance that an athlete is training, but want to specify exactly what kind of training the athlete does. Conflicts arise when the athlete and the athlete's personal coach disagree with the program set out by the national coach. Sometimes these conflicts have prevented the athlete from being named, or accepting a nomination to the national team.

A related issue is testing. Athletes are understandably wary of some testing programs. Physiological tests can lead to injury.[91] Psychological tests often yield information that can be used against the athlete's best interests.[92] Some sports governing bodies have made these tests compulsory. The Canadian Amateur Wrestling Association, as a condition of athlete assistance, requires athletes to "participate in all physiological or psychological testing programs approved by the CAWA Technical Committee". Often the athlete receives a double message: the professional who conducts the test indicates that the athlete has the right of refusal; but the coach applies pressure on the athlete to submit.

"I once refused to take a muscle biopsy during a national training camp and I was ostracized by the coaches and other athletes," a perennial Canadian Olympian said.

The number of testing problems — and the potential for conflict — is likely to increase. Geoff Gowan, the technical co-ordinator of the Coaching Association of Canada, wrote: "the results of (a national) survey confirm that the national sports governing bodies are aware of the importance of the sport sciences specialists and it appears that there will be greater need for sport science assistance." The three most pressing needs identified by the survey were: sport psychology, exercise physiology, and sports medicine.[93]

It is our view that these issues of training and testing must be resolved in the context of the medical rights of "informed consent" and the right

to the confidentiality of records. In the medical context, "informed consent" has been described by Chief Justice Laskin as follows, in *Lepp v. Hopp*, the first decision of the Supreme Court of Canada to rule on the point:

> The term "informed consent", frequently used in American cases, reflects the fact that although there is, generally, prior consent by a patient to proposed surgery or therapy, this does not immunize a surgeon or physician from liability for battery or for negligence if he has failed in his duty to disclose risks of the surgery or treatment, known or which should be known to him, and which are unknown to the patient.[94]

Later, he observes:

> ...in obtaining the consent of a patient for the performance upon him of a surgical operation, a surgeon, generally, should answer any specific questions posed by the patient as to the risks involved and should, without being questioned, disclose to him the nature of the proposed operation, its gravity, any material risks and any special or unusual risks attendant upon the performance of the operation.[95]

It was stressed in a later decision of the Supreme Court, *Reibl v. Hughes*, that "...even if a certain risk is a mere possibility which ordinarily need not be disclosed, yet if its occurrence carries serious consequences...it should be regarded as a material risk requiring disclosure."[96]

A lay person's guide issued by one organization elaborates on these points as follows:

> Except in an emergency, an operation or medical procedure may not be performed on a patient without her consent. A signed consent form does not prove conclusively that the patient has authorized the treatment voluntarily (not under the influence of drugs, etc.) You may modify consent forms by adding or crossing out parts. You do not have to sign blank or "all inclusive" consent forms.
>
> In order for consent to be considered valid, three conditions must be fulfilled:
>
> i) consent must be given in a free and voluntary manner;
>
> ii) the patient must understand the general nature of the treatment (you must be given information about proposed procedures, alternatives, and possible serious side effects);

iii) the consent is specific to a particular operation or procedure.[97]

"Informed consent" is also a requirement in the testing situation. It is recognized as such by the protocols governing experimentation with human subjects, established by universities and scientific bodies.[98]

For athletes, "informed consent" means that they should be told the purpose and risks of a particular testing procedure, and that they have the right to accept or refuse the procedure and seek alternatives. This right is respected by most sport scientists. Appendix IV provides an example of one "Informed Consent" form used in testing. The risks involved — "fainting, chest discomfort, cramps, and rarely, heart attacks" — are not only spelled out on the consent form, but the experimenter orally briefs the athletes on the procedures and their effects before the form is administered.

In addition, athletes being tested or treated should enjoy the right to confidentiality of medical information recommended by the Ontario Commission of Inquiry into the Confidentiality of Health Information.[99] This right is beginning to be respected as well, at least in the case of medical treatment. The Sport Medicine Council of Canada has now drafted a medical reporting form, for use by medical staff on national teams, that is consistent with this right. It requires the athlete's consent before the diagnosis is released to anyone else, including coaches and managers.[100]

It is our belief that the right to "informed consent" should also be recognized in training. Athletes do not consider their training a form of medical treatment or physiological experiment. This is true even when training subjects them to intensive aerobic and anaerobic stress, diet and hormonal manipulation, and feradic stimulation (a form of therapy/training with electronic stimulation of muscles). Most regard these practices as a necessary evil of participating at the highest levels of performance.

But some athletes and physical educators have come to regard the practices in a different light. They argue that the training demands of coaches and sports governing bodies impose physiological and psychological change on an athlete. This change can be likened to the change imposed by medical treatment or scientific experimentation. Some of these treatments are not fully understood; the scientific community is quite divided on the merits and ethics of feradic stimulation, for example.[101]

In these circumstances, coaches and other officials of sports governing bodies ought to be bound by the ethics adhered to by

medical practitioners and scientific experimenters. Conversely, athletes ought to enjoy medical rights in both testing *and* training situations. Dr. Carolyn Thomas of the State University of New York at Buffalo has argued:

> For the most part, a coach, a trainer, a physician and management in general do take a great deal of liberty with an athlete's body. They ask the athlete to change diet. They ask the athlete to change patterns of weight gain or loss. They ask the athlete to run anaerobic training patterns. They ask the athlete to play with injury. They ask the athlete to think certain kinds of things, to behave in certain ways and so on. So, essentially, what we are doing as management, as experimenter, is imposing change and up until now imposing change *without consent* upon an athlete during the change process. . . .
>
> If the choice is the athlete's and if the choice is a function of informed consent, then we must consider it to be a valid choice and the training ethic has integrity. But if we are asking athletes to make an uninformed or uneducated choice or if we ask them to abdicate choice out of coercion or out of their own vulnerability, then we are in fact violating some basic human rights.[102]

Is the analogy to medical patients and subjects of scientific experiments a good one? We believe it is. If it is, then the extension of these rights to coaching—not just testing—would have a profoundly beneficial impact on Canadian sport. The requirement that coaches discuss the nature and risk of different training methods and seek the athlete's consent, for example, might significantly reduce alienation and injury. If "informed consent" in testing is to have any genuine meaning, coaches as well as sport scientists must respect the right of informed athletes to refuse a test, or to refuse to release their personal results to anyone else.

Our chief concern here, however, is the Sport Governing Body/Carded Athlete Agreement. The existence of these rights has several important implications for the contract.

First, no athlete should be disciplined, or denied CAAP or other grants, for refusal to participate in a particular form of training or to train under a particular coach. If an athlete has been fully informed about the recommended training program, and then decides not to participate, he or she should be free to make that decision.

In one case, the Ontario government has ruled that such a refusal should have no bearing on an athlete's selection for a grant. After selection, the athlete should be allowed to fulfil the training

requirement under the supervision of any qualified coach or, in the case of a self-trained athlete, with the agreement of any qualified coach.

Secondly, no athlete should be disciplined for refusal to participate in any testing program, whether physiological or psychological. Agreement to take the test(s) entitles the athlete to:

i) a full report of the results;

ii) the right to confidentiality; no information obtained from the test(s) should be shared with anyone else without the written permission of the athlete.

B.2 *We recommend that Sport Canada review the Sports Governing Body/Carded Athlete Agreements established under the Canadian Athlete Assistance Program to ensure that the obligations established therein do not interfere with the right to free speech, and conform to the right to "informed consent" and confidentiality of medical records.*

III. Are the penalties graduated in accordance with the severity of the violation?

The sanctions provided in most agreements are extremely severe. The CCA agreement, for example, states:

> Any Team Member who without good cause abandons his National Team position or who is dismissed from the Team because of violation of the terms of this agreement may be held liable to repay the Association for all or part of the expenses incurred by the Association on his behalf during his participation in the National Team program.
>
> Any member who does not abide by the Team Rules, including the unwritten rules of the past, will be liable to penalization by:
>
> 1. Withdrawal of allowance,
>
> 2. Withdrawal of competition privileges including entries in races,
>
> or
>
> 3. Immediate dismissal from the Team.

These sanctions are applicable, by the terms of the agreement, to each and every provision. They range from the requirement to dress properly to the prohibition against foul language.

These sanctions are unfair in their severity. By the extreme latitude

they allow in sentencing, they open the possibility for the unequal treatment of offenders. We have already argued that the sanction of suspending an athlete's competitive privileges should be reserved for instances of gross disruption of competition. This argument is applicable to these agreements also.

Sports governing bodies also seek the power to suspend an athlete's assistance grants for failure to maintain high-level training, or for the gross neglect of training. To be fair to athletes, they should state the measure for "gross neglect of training" or "lack of commitment" in objective terms; preferably it should be negotiated with a representative group of carded athletes.

For violations other than gross disruption of competition and gross neglect of training, other sanctions should be developed (e.g., small fines, team service) and related to specific violations of the contract.

In addition, if the sports governing body is to exercise some discretion about whether it will invoke the contract and impose sanctions for each and every violation, the person responsible for enforcing the contract should confine his or her discretion by stating, in an addendum to the contract, the factors that will be taken into consideration in deciding whether to impose sanctions. Factors that might be considered include: whether it was a first violation, whether the athlete caused harm to anyone else, whether the athlete was provoked, and whether the athlete has made or will make restitution.

B.3 *We recommend that Sport Canada review the Sport Governing Body/Carded Athlete Agreements to ensure that if penalties are established, each penalty be clearly related to a particular act or category of acts; that the penalty of suspension of competitive privileges be reserved for those actions that blatantly disrupt a competition.*

IV. Are there well-established procedures of "natural justice" in cases where sanctions are imposed?

According to the *Guide to the Athlete Assistance Program,* sports governing bodies are required to establish "discipline and appeal procedures" to govern any contractual violations. At the time of our survey, only three associations had established formal procedures. These were the Canadian Equestrian Federation, the Canadian Amateur Swimming Association and the Canadian Amateur Wrestling Association. The representatives of nine other associations told us that a specific committee had been designated to handle cases of discipline. Clearly, more explicit and uniform procedures are necessary.

We have modelled our recommendations on the informal practices and the "due process procedures" that have developed in the Canadian Amateur Swimming Association for discipline on representative teams (see Appendix I). These procedures were developed in a collective way in response to real-life situations, so that we believe they provide a good starting point. But they do not graduate procedures and penalties according to the seriousness of the violation, and we have amended them accordingly.

B.4 *We recommend that Sports Canada ensure that the sports governing bodies establish the following procedures.*

A. Cases Where the Proposed Penalty is Other than the Loss of Competitive Privileges.

1. The national coach or a specifically designated official should be responsible for enforcing the agreement.

2. Where it is alleged that the agreement has been violated, the coach should meet with the athlete, state the charges against the athlete, and the penalty the coach plans to impose. The athlete should then be allowed to defend herself or himself. The coach then makes the decision.

3. If the coach decides that a violation has been committed and to impose a penalty, the coach should immediately inform the athlete and the elected team captain.

4. If the athlete wants to appeal the decision, the athlete should go to the team captain, and the team captain should talk to the coach about reconsideration.

5. The penalty should not go into effect until the team captain has talked to the coach about reconsideration.

B. Cases Where the Proposed Penalty is the Loss of Competitive Privileges

1. The national coach or a specifically designated official should be responsible for enforcing the agreement.

2. Where it is alleged that the agreement has been violated, the coach should meet with the athlete, state the charges against the athlete, the penalty to be imposed, and the time and place of a hearing. The athlete should be given at least 12 hours to prepare a defence unless the urgency of the situation dictates otherwise.

3. A disciplinary panel should be established to conduct the hearing. It should be composed of the coach, the elected athletes' representative, and one other team official who is agreeable to both the coach and the athlete.

4. At the hearing, the athlete should be allowed to:

a) call evidence,

b) testify personally,

c) make submissions and arguments,

d) cross examine witnesses from the "other side",

e) be represented by someone else.

5. The panel must decide whether the charges have been proven. If the athlete is convicted, the panel may decide to withdraw the athlete's privileges or whether to impose some other penalty. If the violation arose out of circumstances that could have been avoided in any way, the panel should make recommendations to the sports governing body for improvement. The panel must keep a written record of the grounds for its decision. Where possible, it should keep an audio or audio-visual tape of the hearing.[103]

6. Neither the coach, nor the athlete, nor any other member of the association should release any information about the case until after the hearing.

7. If convicted, the athlete should be entitled to appeal the case, in writing, to the association's board of directors.

The above recommendation, like Recommendation A.4, assumes that representative team athletes elect team captains and other spokespersons. At present, however, this is rarely the case. Of the national and provincial federations we surveyed, only 10 reported that athletes elected their own representatives. Even on the Canadian Olympic Association's Athletes' Advisory Council, the majority are appointed by sports governing body officials, not elected by fellow athletes. This practice cannot ensure effective and legitimate representation. It is therefore essential that athletes in all sports act to determine their own representation.

If the duties of elected representatives become too onerous, the athletes should be able to choose representatives from among the recently retired. On the United States Olympic Committee, where athletes' representatives enjoy both voice and vote, an athlete can serve

as an elected athletes' representative for eight years after the last Olympic Games in which the athlete took part. Canadian athletes should be able to take advantage of the experience of recently retired competitors, defined in this way, as their elected representatives.

If the sports governing body wishes to withdraw an athlete's training assistance for "lack of training", it should follow the procedure recommended in (b) above. It may, however, bypass its own procedures, and use the procedures for "withdrawal of card status" established by *The Guide to the Athlete Assistance Program.* These are as follows:

Withdrawal of Card Status

An athlete carded under the Athlete Assistance Program may withdraw or be withdrawn from the Program for the following reasons:

(a) Voluntary Withdrawal

An athlete wishing to withdraw from the Program shall do so by writing to his/her National Sport Governing Body. Once the National Sport Governing Body is satisfied that the withdrawal is bona fide, it shall provide written advice to the appropriate sport consultant and the Program Manager, stating the effective date of withdrawal. Any allowances previously paid for periods subsequent to withdrawal date shall be refunded by the athlete to the Receiver General For Canada. Replacement athletes may be nominated, subject to Regulation 3(a). However, should the nomination be approved, their eligibility period shall not commence earlier than the withdrawal date of the athletes they are replacing.

(b) Withdrawal — Lack of Commitment

If a National Sport Governing Body wishes to withdraw carding of an athlete for alleged lack of commitment, it shall take the following action:

(i) advise the athlete concerned by registered letter of the intention to withdraw card status stating the reasons for withdrawal and requesting reasons why this action should not be taken. This letter to be sent at least thirty days in advance of the proposed withdrawal date and copied to the appropriate sport consultant.

(ii) on the proposed withdrawal date, make written application to the appropriate sport consultant to withdraw the card status, at the same time enclosing any statement received from the athlete

defending his or her position. The consultant will review these documents and advise the National Sport Governing Body and the Program Manager whether Sport Canada concurs with the proposed withdrawal;

(iii) the National Sport Governing Body shall notify the athlete accordingly and may nominate a replacement athlete to the A.A.P. Committee if that is deemed desirable;

(iv) it should be noted that failure of an athlete to achieve pre-set performance objectives does *not* in itself establish lack of commitment.

(c) Withdrawal - Gross Breach of Discipline

If a National Sport Governing Body wishes to withdraw an athlete's card status for an alleged gross breach of discipline it shall follow the procedures outlined in (b) above.

(d) Withdrawal - False Application

Where it has been established by Sport Canada that an athlete has made a false application with intent to obtain allowances for which he or she would have otherwise been ineligible or if an athlete retains funds for which he is no longer eligible due to a change of status, Sport Canada may, at its sole discretion, withdraw that athlete's card status effective immediately.

These procedures contain several weaknesses. First, they do not stipulate that an athlete's card can only be withdrawn for breach of rules that have been clearly stated in the contract. They should do so, and such rules should be free from ambiguity.

Secondly, they leave open the possibility that the sports governing body gets two chances to state charges against the athlete: 1. in the registered letter to the athlete; 2. in the "written application to the sports consultant". This would be unfair. In the first instance, the sports governing body should make written application to the sports consultant for withdrawal of card status, spelling out

i) the specific rules that were broken; (these rules must be part of the Sport Governing Body/Carded Athlete Agreement approved by Sport Canada);

ii) the material facts supporting the allegation that the rules were broken.

The consultant would then send a copy of the sports governing body's application to the athlete by registered mail, and inform the athlete that

a reply must be made within 30 days of receipt of the letter. (The consultant should also have the discretion to convene a hearing in which statements and questions from both sides may be heard.) The consultant would then make the decision based on the two statements, and notify both parties of the result.

Thirdly, there are no safeguards for withdrawals of carded status on the grounds of "false application". Athletes should enjoy the same protections in this area.

Finally, there is no possibility for appeal or reconsideration. If the sports governing body has already taken the athlete through its own disciplinary procedures, then the application for withdrawal to Sport Canada will effectively amount to an appeal. But in cases where the charges are only made to Sport Canada, the athlete should enjoy a second consideration. It is our belief, following Chief Justice McRuer, Professor Davis, and other legal scholars, that the appeal procedure will be rarely used, but functions as an essential safeguard.

B.5 *We recommend that Sport Canada amend the CAAP Guidelines for withdrawal of card status so they read as follows:*

(b) Withdrawal — Lack of Commitment

If a national Sports Governing Body wishes to withdraw carding of an athlete for alleged lack of commitment, it shall submit an application to the appropriate Sport Canada consultant that the athlete should be removed from the program. Such application should state:

(1) the specific rules that the athlete allegedly broke. These rules must be contained in the Sport Governing Body/Carded Athlete Agreement approved by Sport Canada;

(2) the material facts supporting the allegation that the rules were broken.

The sports consultant will then advise the athlete by registered mail that the athlete faces withdrawal, enclosing a copy of the sports governing body's letter, and inform the athlete that she or he has 30 days from receipt of the letter to defend herself or himself. Once the athlete's letter of defence has been received, the sports consultant will make the decision and notify both parties of the grounds for the decision.

The sports consultant may decide to reinstate the athlete, to reinstate the athlete with a lesser penalty provided for under the agreement, or to withdraw the athlete's carded status. If the alleged violation arose because of circumstances that could be avoided, the sports

consultant should make recommendations for improvement.

It should be noted that failure of an athlete to achieve pre-set performance objectives does *not* in itself establish lack of commitment.

(c) Withdrawal — Gross Breach of Discipline

If a national sports governing body wishes to withdraw an athlete's card status for an alleged gross breach of discipline, it shall follow the procedures outlined above.

(d) Withdrawal — False Application

If the sports consultant has grounds to believe that an athlete has made false application with intent to obtain allowances for which the athlete would otherwise have been ineligible, or if an athlete retains funds for which the athlete is no longer eligible due to change of status, the sports consultant will recommend to the program director that the athlete's card be withdrawn, stating in writing the material facts supporting the allegation that false application was made. The program director will then notify the athlete by registered mail of the allegations and give the athlete 30 days from receipt of the letter to reply. If, after receipt of the athlete's defence, the program director decides that false application has been made, the director will withdraw the athlete's carded status immediately. If the alleged violation arose because of circumstances that could have been avoided, such as vaguely-worded guidelines, the program director should initiate the appropriate improvement.

(e) Reconsideration

In cases of (b) and (c) above, if the specific charges against the athlete were made for the first time in Sport Canada proceedings, the athlete has 10 working days after receiving the letter informing of withdrawal to file an appeal. The athlete's appeal should state specific reasons why the decision of the sports consultant should be overturned. It should be made in writing to the program director, who should decide on appeal.

If the appeal is rejected, or if after 10 working days the athlete has not filed an appeal, the national sports governing body may nominate a replacement to the A.A.P. Committee.

Despite the checks implicit in these procedures, Sports Canada consultants required to make decisions about withdrawal may still exercise a considerable amount of discretion in passing sentence. If this

turns out to be the case, it will be essential, in the interests of equal justice, that they agree to, and publish, further guidelines about how they will exercise their discretion.

V. Inequality of Bargaining Power

We cannot leave the subject of athlete/association contracts without stating that the terms of the present agreements are extremely onerous. According to the *Guide*, the program was designed

> to allow (athletes) to successfully pursue excellence in sport while maintaining educational career development...
>
> Sport Canada recognizes the commitment made by athletes to long-term training and competitive programs to achieve their personal goals. By providing financial assistance to offset certain living and training expenses, by partially compensating for lost wages, and by paying tuition fees for student athletes, Sport Canada is endeavouring to relieve some of the pressures experienced by athletes while participating in international sport and maintaining educational programs and careers....The personal careers and goals of our athletes must be appreciated and given consideration by their coaches, their Sport Governing Bodies and funding agencies.

Yet many agreements contradict the intent of the CAAP and impose additional obligations. Contrary to the above statement, for example, the CCA requires athletes to subordinate their lives, education, and careers to the team. While application for carded status must be made every year (every two years for A cards),[104] the CCA requires:

> The Team Member agrees that acceptance of a place in the National Team involves a commitment to the Team for *at least three years* and that his educational, employment and personal responsibilities will be arranged as far as possible to permit fulfillment of this commitment (emphasis added).
>
> The Team Member agrees to assist where possible with furthering the aims and promotion of the Association including coaching assistance to developing cyclists both *during and on retirement from his years of competition* (emphasis added). (See Appendix III)

The *Guide* does not state that an athlete must coach in the same sport for the rest of the athlete's life as a condition of assistance.

Several agreements we have studied (e.g., CTFA, CAWA) compel, without option, that athletes participate in a long list of training camps and competitions, any one of which could conflict with an athlete's education or career.

In 1982, a cyclist was dropped from the World's team because he refused to compete in what, for him, was an unimportant local meet. The decision to require his participation in this meet was made unilaterally by the association.

Some associations (e.g., CASA, NCCST) compel athletes to use, and thereby advertise for free, a particular sponsor's equipment. Yet the *Guide* does not state that an athlete must advertise sporting goods manufacturers as a condition of assistance.

In addition to these obligations, in many contracts, athletes are told what to eat, when they have to go to bed, and whom they can visit. In return, they receive less than the minimum wage, less than unemployment insurance, even less than welfare. No other recipients of federal grants live under these conditions. Artists and writers receiving Canada Council assistance are not required to act in a stipulated way. Canadian scientists and business people who travel abroad on federal funds, and who also "represent" Canada, are not required to dress in a particular way, nor avoid the consumption of alcohol.

In many ways, the agreements bear a strong resemblance to contracts of employment. Indeed, some people might be prepared to go further and suggest that they *are* such contracts. According to the traditional approach to analysing the employment relationship, there are four main indicators that a contract of service exists. They are:

> ... (a) the master's power of selection of his servant; (b) the payment of wages or other remuneration; (c) the master's right to control the method of doing the work, and (d) the master's right of suspension or dismissal.[105]

In this case, the sports governing body has the power to select an athlete for membership on the national team, and to suspend or dismiss the athlete. It controls the method directing the athlete's performance, through training requirements: the requirement that there be a coach or technical director, the requirement that there be attendance at a specific number of camps and meets, and the general instruction that athletes conduct themselves for the "benefit" of the program.

What is absent is an agreement to pay remuneration. Ironically, the very fact that the payments (usually termed "allowances" by the *Guide*) are so small may prevent a court from holding that the parties intended a contract of employment, for no person would agree to be employed for so little. Consequently, the greater protections of the real employment relationship would not be available.

On the other hand, an Ontario court has ruled that a person can be regarded as engaged in an "occupation for wages or profit" when

engaged in a manpower training program financed by unemployment insurance and a training allowance. Mr. Justice Robins observed in that case, "The fact that such payment is termed an 'allowance' does not preclude it from constituting wages or profit."[106]

If the agreements were found to be employment contracts, other protections would be available to the athlete. The first of these is the common-law requirement that the employer may only dismiss an employee without notice where the dismissal is for cause. It is hard to imagine that many of the actions prohibited in these agreements fall into that category. Secondly, employment contracts are subject to minimum standards legislation.

Athletes' agreements are signed under conditions of great inequality of bargaining power. In most cases, the athlete cannot compete nationally or internationally without entering into one of them. The athlete does not sit down and bargain, either individually or collectively, with the sports governing body about what is going to be in the agreement. In effect, it has been imposed on the athlete. The athlete's only choice is whether to accept it and compete, or refuse to accept it and not compete. In fact, the front page of the Ontario Water Polo Association's athlete agreement form states: "IF YOU DO NOT SIGN, YOU DO NOT GO".

There is a developing doctrine that "inequality of bargaining power" can sometimes lead to relief from the terms of a contract. In *Lloyd's Bank Ltd. v. Bundy*, Lord Denning identified the principle of inequality of bargaining power and described its effect:

> ...the English law gives relief to one who, without independent advice, enters into a contract upon terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other.[107]

It is not clear whether a Canadian court would accept Lord Denning's reasoning or apply it to athletes, but it certainly is a persuasive analogy.

The inequality of bargaining power in athlete's agreements leads us to suggest that athletes in the Olympic sports constitute themselves as a formal body, and bargain collectively with Sport Canada for improved terms in the general conditions of these agreements, and with their respective sports governing bodies for particular terms.[108] They should negotiate:

- the criteria for carding and team selection,
- remuneration and benefits,
- rules of behavior.

In addition, individual athletes should negotiate the specific competitions and camps at which they will appear.

These suggestions will no doubt be received as anathema by those who believe that, as national and sport representatives, athletes should always be subject to tight discipline and the complete control of the coach. But most athletes are adult members of society who have the right to direct, in co-operation with coaches, sports executives, and so on, their own athletic activity.

In commercial sport, the trade unions formed by athletes have not only improved their own salaries and working conditions by collective bargaining, but they have initiated many other improvements. In its brief existence, the Athletes' Advisory Council of the Canadian Olympic Association has demonstrated that athletes can play a useful role. Negotiations over the terms of agreement will certainly be difficult. This is especially true in a situation where the federal government has placed a ceiling on Sport Canada expenditures. But they are necessary to reduce the unfairness that exists.

B. Discipline Under Provincial Sports Governing Body Rules

There are no comparable "contracts" for athletes at the provincial level in Ontario. Although some associations require athletes to sign a "trip agreement form", these forms do not set out terms for the exchange of benefits. They therefore cannot be considered binding contracts. Their purpose is to ensure that athletes travelling as members of Ontario teams are aware of, and agree to, the rules. In this situation, disciplinary codes must be established by the proper procedures before they can be considered binding.

We surveyed 16 Ontario sports governing bodies. Only five had established formal rules for discipline on representative teams. These were: the Ontario Gymnastics Federation, the Ontario Sailing Association, the Ontario Water Polo Association, the Ontario Section of the Canadian Amateur Swimming Association, and the Ontario Volleyball Association. Representatives of nine provincial associations told us they believed they could act in an ad hoc fashion when difficulties arose. Some associations have informally delegated the responsibility for discipline to the provincial coach, others to the

board of directors. Some of these associations had well-established rules for regular competitions, but none for representative teams. If they wish to regulate the behavior of athletes on representative teams, we believe they must do so by properly-passed written rules.

Several of the existing behavior codes are so unclear that they infringe on an athlete's liberties. Although we have made this point before, a few additional examples may be instructive. The Ontario Gymnastics Association stipulates:

> Persons found guilty of the following offences shall be considered to have violated the rules of conduct and deportment, and will be liable to penalty.
>
> 1) Unsportsmanlike conduct at any time.
>
> 2) Failure to maintain a satisfactory state of performance for non-medical reasons.
>
> 3) Performing acts of disobedience, discourtesy, dishonesty, theft, mayhem, or using abusive language, or engaging in acts harmful to others.
>
> 4) Being found impaired by alcoholic drink or drugs, using or dispensing marijuana, hashish, or drugs.
>
> The term "unsportsmanlike conduct" encompasses violation of criminal statutes of Canada or of the country in which one is travelling, behaviour or actions intentionally directed towards the subversion of the integrity and regulations of the sport, or behaviour or actions directed towards creating an unfair disadvantage for an opponent, with deliberate and malicious intent. [109]

Many of these requirements leave an unnecessarily wide latitude for interpretation. Consider "unsportsmanlike conduct". It is defined to include breaking the Criminal Code and the competitive rules of the sport (rules that are stated elsewhere). But it also includes "the subversion of the integrity" of gymnastics. This phrase is meaningless. A sport like gymnastics can only have "integrity" in a metaphorical way. The activity itself cannot be said to have a precise essence. Different societies at different times have given it widely different meanings. Largely as a result of athletes' innovations, they are constantly changing these meanings. The national or provincial association cannot have an "integrity" apart from its members. So it is difficult to know precisely what integrity is to be subverted. Yet the phrase has the effect of dissuading members from raising critical

questions about the sport.

Another example of vagueness is "a satisfactory state of performance". Since no precise criteria are given, it could mean almost anything. Does it apply to a single poor performance? How are "non-medical reasons" to be interpreted? Nor is it clear *who* will determine whether the athlete has not performed satisfactorily. Some might argue that such vagueness will only encourage athletes to perform at their best. But when it is coupled with the threat of penalty, it is more likely to put them under unnecessary pressure.

Here's another imprecise phrase: "impaired by alcoholic drink or drugs". What is the measure of impairment? Is it a certain amount of alcohol in the bloodstream, or the inability to perform the giant swing after a party? What is meant by drugs? Those prohibited by the International Olympic Committee? Birth control pills? Caffeine? Who will decide?

Sports governing bodies seeking examples of clarity in disciplinary codes should consult some of the available competitive rules. The rules of the Ontario Tennis Association leave little room for doubt:

Players are under an obligation to avoid unsportsmanlike conduct, acts or practices which, in the opinion of the OTA are detrimental to the ethics of tennis. These include but are not limited to:

1. Entering a tournament and then failing to appear without valid reason *and* adequate notice.

2. Appearing on court without proper attire and not in accordance with regulations of the host club.

3. Defaulting in a tournament or match except as a result of personal injury or other valid reason.

4. During the course of a match:

(a) to swear at an official, ball boy, spectator, or opponent.

(b) to use profanity or obscene language or gestures.

(c) to show outward displays of temper including racquet throwing.

(d) to deliberately throw or hit a ball in the direction of an official, spectator, or opponent.

(e) to threaten bodily injury to anyone.

(f) to indulge in blatant gamesmanship, which includes deliberate stalling.

(g) to intentionally wave racquet or arms, to make gestures or noises in order to distract an opponent.

(h) to receive coaching except during official rest period between sets or during suspension of play due to weather conditions. ...

Violations of the OTA Standard of Conduct may subject the player to default and will be reported in writing to the OTA by the tournament director. All reports will be investigated and offending players may be subjected to further disciplinary action in accordance with the By-laws, rules and regulations of the OTA.[110]

Such clarity is equally essential in the rules governing representative teams. There is one statement in the OTA Standard of Conduct that is open to abuse, however. It states: "these (acts) include, but are not limited to..." Such a statement could be the basis for unfair discretionary power. Under the "rule of law", all laws should be exhaustive. If OTA members have another category of actions that they wish to outlaw, they should so specify. If they wanted to preserve the right to discipline a player for any unanticipated disruption, they might add, under 4:

(i) any other action which, in the opinion of the umpire, constitutes a blatant disruption of the match.

In addition, the OTA disciplinary committee should confine and structure its own discretion by publicly declaring the guidelines it will employ in deciding whether to "subject (players) to further disciplinary action".

Several associations stipulate that athletes must not break the law. For example, the Ontario Water Polo Association rules state:

Unacceptable behaviour shall include:

(i) committing any act which would be considered an offence under Federal, Provincial or Local Laws. An offender should immediately be sent home. Where this is not possible, the offender should be confined to hotel or motel and disqualified from further competition and OWPA informed by phone or wire.[111]

The intention underlying this rule is commendable, but as it stands it is unfair. It threatens the athlete with loss of competitive privileges without the protections of "natural justice" and the presumption of innocence, and for an act that may have nothing to do with sport. The term, "Local Laws", is highly ambiguous. Does it mean all the municipal by-laws in the city where the athlete lives, or where the competition occurs? Does it mean the criminal laws of a foreign

country, like the United States or Mexico, where the provincial team might be competing? In either case, it is unlikely that the sports official or the athlete will have a competent grasp of what the law actually means.

Given the complexity and multiplicity of the law, no one without legal training should be given power to "consider" what is an offence. Coaches and team managers are usually appointed for their knowledge of the sport, not their legal knowledge (or moral views). If there is a particular action that the sports governing body membership wishes to prohibit, it should state it, or remind the athlete of the law. Here is a sample wording:

> Athletes are reminded that the laws of Ontario regarding alcoholic beverages apply to them. Under the Narcotics Control Act of Canada, possession of, use of, and trafficking in marijuana, hashish, heroin and other narcotic drugs are prohibited. Athletes are advised that they must assume full responsibility for their actions in these regards.

If an athlete commits an act that is not contrary to any association rule, but one that the coach or other team official believes to be illegal, the coach should report it to the police. But the sports governing body should not take the law into its own hands.[112]

We have already mentioned the need to graduate penalties according to the seriousness of the rule violation, and to reserve the penalty of suspension of competitive privileges for serious disruptions of competition. Many associations follow these principles in their competition manuals, but neglect to do so in the case of representative teams. The rules of the Ontario Water Polo Association and the Ontario Section of the Canadian Amateur Swimming Association contain the following statement:

> Regarding breaking training and curfew, gross misbehaviour and unsportsmanlike conduct; depending upon circumstances, punishment could vary from above as the most severe extreme to a written caution to the offender as the least extreme, and punishment may also include full or partial restriction on movement or participation in any event or a report submitted on each individual incident, major or minor, so that the governing body may decide what further action should be taken.[113]

It is extremely difficult to determine exactly what this statement means. We think it allows an unidentified official to decide what penalty to invoke, from a list that ranges from a written caution, to suspension

from competition, to "further action". Again, there is need for clarity and clear graduation of sanctions.

B.6 *We recommend that the Ontario Ministry of Tourism and Recreation require, as a condition of provincial assistance, that sports governing bodies clarify their rules governing representative team behavior, according to the following guidelines:*

1. That, as a goal, rules of behavior be stated with such clarity of language that no difficulty arises in their application to particular states of fact. Where an official has discretion of decision-making, either by delegation or as a result of vagueness in the rule, the official should be encouraged to confine his or her discretion by publishing guidelines on how the rule will be interpreted. Athletes and other sports governing members should be invited to respond to the published guidelines. If the official deems it appropriate, amended guidelines should then be issued.

2. That such rules do not interfere with the right to free speech and conform to the right to "informed consent" and confidentiality of medical records.

3. That the rules clearly state the penalty to be associated with each specific act or category of acts.

4. That the penalty of suspension from a representative team be reserved for those actions that blatantly disrupt a competition.

5. That the procedures for enforcing the rules be consistent with those recommended in B.4.

C. Withdrawal of Ontario Athlete Assistance

Under this program, "the athlete must commit to train intensively in pursuit of National Team Status". If athletes fail to carry out this commitment, they can be withdrawn from the program. Although the Ontario program requires sports governing bodies to submit selection criteria for approval, they are not required to develop formal commitment forms nor procedures for withdrawal and submit them for approval. To date, there has been only one case of withdrawal. In it, the association wrote the program director, asking him to stop the payment of grants to athletes and send their cheques to two other athletes. He did so.

Although the Ontario program director contends that the obligations of the Ontario program are not intended to be contractual, the guidelines we have suggested for the federal program should apply here.

B.7 *We recommend that each sport governing body be required to develop a standard "commitment form" and submit it to the program director for approval. A procedure for withdrawals similar to the one we have recommended for the federal program should also be established. Both requirements should be announced in the next set of guidelines published by the program.*

*Canadian Olympic Association 1972

LEGISLATIVE PROTECTIONS

A. An Athlete's Bill of Rights

Let us suppose the foregoing recommendations are put into effect. It will give substantive protection (i.e. dealing with the content of the rules) and procedural protection to athletes in those sports governing bodies that receive direct government assistance. But athletes in educational institutions and unaffiliated athletic organizations would still have to resort to the courts to win relief from unfair decisions. This is undesirable.

Section 7 of the new *Charter of Rights* may be of assistance to athletes in some discipline situations. Section 7 states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

However, it would still involve needless expense and delay if athletes had to await a test case to establish that it is applicable to sport.

C.1 *We recommend that Sport Canada consult with the Justice Department to ensure that it is the federal government's intention to apply this clause to its legislation, regulations, and programs affecting sport. Then, Sport Canada should publicize—in newspaper ads and booklets—the implications of the Charter of Rights for disciplinary cases in sports. Similar action should be taken at the provincial level, since the charter applies to the provinces as well.*

If the Justice Department indicates that no steps will be taken to apply the charter in areas affecting sport, then Sport Canada should

convene a federal-provincial conference to develop, if possible, uniform protection for athletes in every province.

Since it is not clear whether sport *per se* falls within federal or provincial legislation,[114] it may be necessary to draft a bill for presentation to each provincial legislature. A useful starting point would be the draft bill of the Athletes' Advisory Council of the U.S. Olympic Committee (see Appendix II).

B. Human Rights Legislation to Protect the "Right to Compete"

On occasion, sports governing bodies have excluded athletes from participation on the basis of age. Up until June 1982, the Canadian Amateur Boxing Association restricted membership to athletes 35 years of age and under.

Sexual discrimination is also evident. In several sports, outstanding athletes have been barred from competition, despite support of their teammates and coaches, simply because they were female. The most recent instance of such discrimination was at the 1981 Canadian Robbie Soccer Tournament.[115] Earlier in Ontario, two athletes who had been excluded because they were female successfully sought the protection of the *Ontario Human Rights Code*, only to have OHRC rulings overturned by the courts on the grounds that sports governing bodies are beyond the scope of the human rights legislation.[116]

In Quebec, by comparison, *La Charte des Droits et Libertes de la Personne*—which guarantees not only protection from sexual discrimination but also the safeguards of "natural justice"—has been held applicable to sports associations.[117]

It is our belief that the Ontario government (and other provincial governments in Canada) have an obligation to protect female athletes from sexual discrimination and ensure that team selection and entry to competition is based solely on ability. This view is supported by many authorities. In 1978, Canadian representatives to UNESCO voted for a new International Charter for Physical Education and Sport. This is now the most widely accepted statement on what people's rights in this area should be. Article 1 in the charter states:

> 1.1 Every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality. The freedom to develop physical, intellectual and moral powers through physical education and sport must be guaranteed both within the educational system and in other aspects of social life.

1.2 Everyone must have full opportunities, in accordance with his national tradition of sport, for practising physical education and sport, developing his physical fitness and attaining a level of achievement in sport which corresponds to his gifts.[118]

The Ontario Human Rights Commission became committed to the principle of equal access to sport as a result of the two test cases mentioned above. In these cases, the sports governing bodies involved argued that as private organizations, in which membership was voluntary, they should not be bound by public policy.

This argument no longer applies to the conditions in which sport takes place in Ontario. In the last 15 years, the development of sport opportunities has become a significant government enterprise. Although most athletic competition in the province continues to be conducted under the auspices of the sports governing bodies, the Ministry of Tourism and Recreation has assumed the responsibility for directing over-all sports development. It also finances many aspects of the practice and administration of sport.

The ministry financially assists 70 sports governing bodies, for example. It provides 52 of them with special administrative assistance through the Ontario Sports Administration Centre in Toronto. Such assistance is not made unconditionally; to be eligible, sports governing bodies must adhere to provincial guidelines. In addition, the ministry conducts the Ontario Winter and Summer Games, the Ontario Athlete Assistance Program and many other direct programs. The government as a whole encourages people to participate. Each year it honors the most successful Ontario athletes at a publicly-financed banquet in Toronto. The trophy now awarded to the outstanding athlete in the province is permanently on display in the legislature. In short, sport has become a significant public enterprise.

To the extent that sports governing bodies are assisted by public funds, either by direct grants or the use of publicly financed facilities, they should comply with the prohibitions against sex discrimination established by the *Human Rights Code*.

In one of the test cases, *Re Cummings and the Ontario Minor Hockey Association*, the key legal point was whether certain provisions of the code should apply to volunteer sports governing bodies. Subsection 2 (1) of the code prohibited discrimination "with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted."[119]

Chief Justice Evans, writing for the Divisional Court, reasoned that "The fact that the competitions are held in arenas that are publicly owned or to which the public are admitted does not, in my view make

the service rendered by the O.M.H.A. a service to the public."[120] He stated that the prohibition against discrimination in the code was really a prohibition against discrimination in the provision of "accommodation, services or facilities *available to the public* in any place to which the public is customarily admitted."[121] (emphasis in original) Because the facilities of the O.M.H.A. were restricted to boys, they were not "available to the public", and therefore were not subject to the anti-discrimination rules of the code.

When the Divisional Court's decision in *Cummings* was appealed to the Court of Appeal, the Chief Justice's observations about public facilities were not considered. Rather, the decision was that the O.M.H.A. was not, technically, a "person" which could be the subject of proceedings under the *Human Rights Code*. However, the Court of Appeal did review the issue in its decision on another of the test cases: *Re Ontario Human Rights Commission et al. and Ontario Rural Softball Association*. Only one of the justices, Madame Justice Wilson, explicitly disagreed with Chief Justice Evans.[122]

A new *Human Rights Code* came into effect in June, 1982. Unfortunately, the new code, sometimes referred to as "Bill 7", does not solve the problem of sex discrimination in sports associations. It does provide, in section 1, that "Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of... sex..."

Then, however, it states in subsection 19(2) that the right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in an athletic organization or participation in an athletic activity is restricted to persons of the same sex.

A similar protection for sex discrimination in access to the services or facilities of a recreational club is found in subsection 19(3) of the new code. The only bright note in this situation is the recent decision of the Hon. Russell Ramsay, Minister of Labour, to appoint John Sopinka, Q.C. to a task force to study this question.[123]

C.2 *In view of the foregoing, we recommend that the Minister of Labour introduce into the Ontario Legislature, an amendment to the Ontario Human Rights Code that would prohibit sexual discrimination in sport.*

The following clause should be added to Part I of Bill 7:

Every person has the right to equal treatment in the enjoyment of membership and participation in any athletic organization or event that receives public funds or uses public facilities, without discrimination by reason of sex.

EDUCATION ABOUT ATHLETES' RIGHTS

Athletes' rights can be implemented by legislation, government regulation, sports governing body initiative, and collective bargaining by athletes. Each of these measures may have to be employed.

But to ensure that athletes' rights are respected, all participants must understand that athletes *have* rights, and that it is the mark of a free society and a well-functioning system of sports administration that they be protected. If athletes and their coaches, sports governing body administrators, and technical advisors were familiar with the basic principles of civil rights and applied them in their day-to-day activity, there would be very few cases of the injustices we described at the outset of the paper.

We suggest that an educational campaign be part of the implementation process. Given the traditional resistance to athletes' rights in many sports, an educational campaign might be a difficult task. Yet both federal and Ontario governments have conducted successful educational campaigns on other controversial subjects.

The federal and Ontario governments, acting jointly through the National Coaching Development Program, have convinced a great many Canadian coaches of the importance of taking what John Stuart Mill would call a "developmental" approach to children's sport—defining coaching as the task of helping young athletes achieve *their* particular goals; and subordinating "winning" on the scoreboard to the intrinsic goals of skill acquisition and personal satisfaction.

The same governments, acting concurrently, have effectively challenged the once widespread belief that the most valid test of "excellence" in hockey was a player's ability to give and take a punch.

Other examples could be provided. The point is that when Canadian governments have co-ordinated educational campaigns in sport with new regulations, financial incentives, and astute lobbying, and have pursued their objectives persistently, they have succeeded in changing public opinion in sport.

D.1 *We recommend that simultaneous to the implementation of our previous recommendations, Sport Canada and the Ontario Ministry of Tourism and Recreation mount a joint educational campaign on the subject of athletes' rights.*

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QUESTIONS FOR FURTHER STUDY

Two issues that we have not yet considered deserve careful study. The first is children's rights in sport, vis-a-vis parents and coaches. At the 1981 national swim championships in Montreal, several boys and girls in attendance wore T-shirts with the provocative message: "Competitive swimming is a form of child abuse!" Is it? Are the long hours of training by children in swimming, gymnastics, figure skating, and several other sports compatible with Canadian law and what Canadians generally believe is desirable in the treatment of children?

Children's rights in sport, as in other spheres of their lives, are usually vested in parents or guardians on the expectation that these adults will look out for the children under their care. But in certain cases the state has had to intervene to protect children from their parents.[124]

Do child athletes need such protection? What agency, if any, should be responsible? Sport psychologists such as Terry Orlick, Cal Botterill, and Thomas Tutko have drawn attention to the abuses in children's sport, and have suggested desirable codes of adult conduct,[125] but the question has never been examined in the context of the law. It should be.

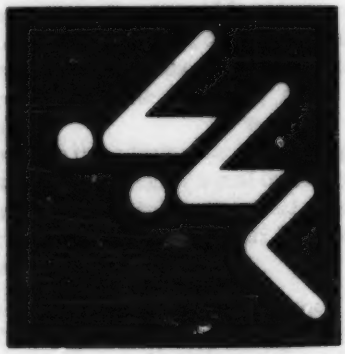
A second question warranting serious study is athletes' rights vis-a-vis their international federations. In a number of federations, athletes can be suspended for long periods of time, without "natural justice" for the violation of rules that have questionable validity.

Under the rules of the International Amateur Athletics Federation, for example, athletes can be summarily suspended for life if traces of certain prohibited substances are found in their urine.[126] Athletes can appeal the term of the suspension, but there is no procedure available to

them to challenge the manner in which the test was conducted. In addition, athletes face suspension even if there is no proven relationship between the amount of the prohibited substance found in their system and enhanced athletic performance. In each case, the national federation must administer the sentence, even if it believes the suspension is unfair.

We are not opposed to the administration of drug tests or any other regulation aimed at ensuring roughly equal conditions in competition. But it should be consistent with substantive and procedural justice. It is essential that the rules of the international federations be examined from the perspective of athlete's rights.

E.1 *We recommend that Sport Canada and the Ontario Ministry of Tourism and Recreation jointly undertake an examination of children's rights in sport, and the rights of Canadian athletes vis-a-vis their international federations.*



"Canadian Olympic Association 1972

CONCLUSION

In 1964, in the midst of a decade of unprecedented government expansion, the Ontario government commissioned Chief Justice McRuer to conduct an inquiry into the civil rights of individuals. As a result of that inquiry, many Ontario statutes were rewritten and Ontario citizens gained several new safeguards against arbitrary and unfair administrative action.

The circumstances that led us to undertake this study are similar to those in which the Royal Commission Inquiry into Civil Rights was appointed. In the 12 years since the announcement of the *Proposed Sports Policy for Canadians*, public and private expenditures on high-performance sport have increased several times over. The agencies that administer sport have grown rapidly in size.[127]

In some ways, athletes have benefited significantly from this expansion. For those who can make a provincial or national team, opportunities are greater than ever before. There is better coaching. There are better facilities, better competitive opportunities. There is more financial support.

But expansion has also spawned a new sport bureaucracy. Full-time executive directors, technical directors, and national coaches make the decisions once made by volunteers. The new professionals are under great pressure to produce winners. They have sought to extend their control over athletes' lives by issuing a stream of directives, rules and "contracts".

Many of the decisions affecting athletes are made on a discretionary basis, without reference to the annual general meeting, which should be the legislative body for sports associations. In these circumstances, the

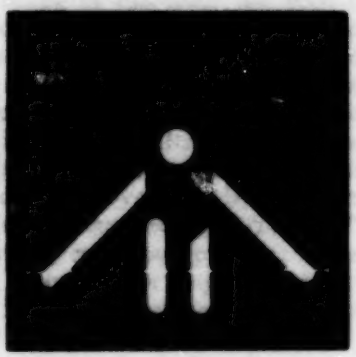
rights of athletes as individuals are easily ignored.

The primary finding of this study has been that there is little protection of basic civil rights in the administration of representative sports teams in Canada. Sometimes the potential for the infringement of rights lies in the substance of rules and regulations. Sometimes it lies in the procedures employed to determine and enforce rules. But as the examples we cited indicate, the potential for abuse is widespread.

There is heavy irony here. Historians like to distinguish the practice of "sport" from earlier "game-contests" by its emphasis on the concept of "fair play".[128] Indeed, the concept of "fair play" is integral to the playing rules of virtually every sport played in Canada. Yet neither the legal concept of "fairness" nor any other basic protections that Canadians enjoy have been built into the administration of high-performance sport in Canada.

The decade of rapid expansion in Canadian sport appears to be over. It is now imperative that the new structures and practices recognize athletes' rights. Athletes do have recourse to the courts in many of the instances we cited, but it would be much better if the causes of the injustice were removed.

This will not be an easy task. Rules must be carefully redrafted. New procedures must be established and used. All participants must learn to respect the principles of athletes' rights. But the task is an essential one: "excellence" without basic rights is simply not excellence.



SUMMARY OF RECOMMENDATIONS

A. Selection

1. Sport Canada and the Ontario Ministry of Tourism and Recreation should encourage the sports governing bodies to determine selection criteria for representative teams according to the following procedures:

1. The selection criteria must be passed by the annual general meeting or its delegate. If it is necessary and unavoidable to delegate the responsibility for determining the criteria, the annual general meeting should delegate it only to an individual or committee qualified to make the decisions.

2. The person or committee to whom the responsibility for determining selection criteria has been delegated should publish, as soon as possible, the criteria that have been determined.

3. Athletes and coaches should be encouraged to suggest amendments to the published criteria by submitting in writing, no later than one month after the publication date of the criteria, their proposals and reasons for change. If the person in charge decides, after reconsideration, that change is desirable, this person should publish the amended criteria. The final criteria should be published at least six months in advance of selection.

4. Each year, the board of directors should report to the annual general meeting about the delegation of the definition of selection criteria and the actual selections made.

2. Sport Canada and the Ontario Ministry of Tourism and Recreation

should encourage the sports governing bodies to formulate selection criteria according to the following principles:

1. That, as a goal, selection criteria be stated with such clarity of language that no difficulty arises in their application to particular states of fact.

2. That, in individual sports, selection be based on a competitive trial, or a performance standard, or both. Where more than one event or standard is used, the rules should state which criterion has priority. Where some discretion is necessary and unavoidable, the rules should state objective criteria, in order of priority, to provide the basis for selectors' decisions. Where vagueness in the rules gives selectors wide latitude in decision-making, the selectors should confine and structure their own discretion by announcing in advance what criteria they will use in selecting teams, and the tests or measures they will use to determine which athletes best meet the criteria. The criteria should be published sufficiently in advance to permit interested athletes and coaches to respond to the criteria and to permit the selectors, if they deem it desirable, to publish amendments. The final criteria should be published at least six months in advance of selection.

3. That, in team sports, the rules should state objective criteria, in order of priority, to provide the basis for selectors' decisions. Any physical or physiological criteria should be demonstrably related to performance. Where selectors' discretion is necessary and unavoidable, or where vagueness in the rules gives selectors wide latitude of decision, the selectors should confine and structure their own discretion by announcing in advance what criteria they will use in selecting the team, and the tests or measures they will use to determine which athletes best meet the criteria.

The criteria should be published sufficiently in advance to permit interested athletes and coaches to respond to the criteria and to permit the selectors, if they deem it desirable, to publish amendments. The final criteria should be published at least six months in advance of selection.

4. Psychological tests should not be used for selection.

3. Sport Canada and the Ontario Ministry of Tourism and Recreation should encourage sports governing bodies to eliminate all possibilities for bias in the selection of representative teams, by adopting this guideline:

In cases where discretion in selection is necessary and unavoidable, persons who have a personal or professional relationship with any athlete contending for the team should disqualify themselves from the selection committee. If all qualified selectors are biased to some extent, the least-biased persons should sit on the selection committee.

4. Sport Canada and the Ontario Ministry of Tourism and Recreation should, as a condition of financial support to representative teams, require sports governing bodies to establish a selection appeal procedure along the following lines:

1. If selection has been made on a discretionary basis, the selectors should keep a brief written record of the grounds for their decisions (i.e., setting out why some athletes were chosen and why others were not).

2. After the selection has been announced, a representative of the selection committee should be available for a 48-hour period, to explain the basis of decision according to the written record. The exact times, locations, and telephone numbers where this person could be reached should be publicized before the selection meeting.

3. If, within 48 hours of the decision, and after speaking with the committee representative, the athlete believes that grounds for appeal exist, the athlete should submit, either orally or in writing, a formal appeal, clearly stating the reasons why he or she should have been selected.

4. There are only two grounds for appeal: (1) selection was not made according to the rules; (2) there was a reasonable apprehension of bias in one or more of the selectors or, if all qualified selectors were biased to some extent, no effort had been made to disqualify the most-biased selectors.

5. A selection appeals board, composed of two national (or provincial) board members who did not sit on the selection committee, plus an elected athletes' representative who did not sit on the original committee, should consider the athlete's statement, plus a statement from the selection committee representative, and make a decision within 24 hours of receipt of the appeal, and notify all parties.

6. The selection appeals board must make one of three decisions: (1) it can grant the appeal and name the athlete immediately to the team; (2) it can order that the selection be reconsidered; (3) it can reject the

appeal. If, in its judgment, the appeal arose because of vaguely-worded selection criteria, or an unnecessary delegation of discretion to selectors, the selection appeals board should make recommendations for improvement.

5. Sport Canada and the Ontario Ministry of Tourism and Recreation should amend their general selection guidelines for athlete assistance to exclude the results of psychological testing as a criterion for selection.

6. The Canadian Athlete Assistance Program and the Ontario Athlete Assistance Program should establish the following appeal procedures:

1. If an athlete feels unfairly rejected for an award, the athlete should file with the program director, within 10 days of the publication of the awards list, a written appeal, clearly stating the reasons for believing that she or he met the criteria, and any other pertinent information.

2. Upon receipt of any appeal, the program director should ask the chairperson of the relevant selection committee to submit a written statement indicating the grounds why the athlete was not awarded a grant.

3. The program director must notify all parties of the decision within 15 days after the receipt of the appeal.

4. If the appeal is successful, the athlete should be paid the grant retroactive to the beginning of the program year.

7. The Canadian Athlete Assistance Program and the Ontario Athlete Assistance Program should allow sports governing bodies, on an annual basis, to appeal the number of cards allocated to their sport.

B. Discipline

1-4. Sport Canada should review the "Sport Governing Body/Carded Athlete Agreements" established under the Canadian Athlete Assistance Program to ensure that:

1. the terms of such agreements are stated with such clarity of language that no difficulty arises in their application to particular states of fact.

2. the obligations of the agreements do not interfere with the right to free speech and conform to the rights to "informed consent" and confidentiality of medical records.

3. if penalties are established under the agreements, each penalty be

clearly related to a particular act or category of acts; that the penalty of suspension of competitive privileges be reserved for those actions that blatantly disrupt a competition.

4. the agreements provide for the procedures of "natural justice", along the following lines:

A. Cases Where the Proposed Penalty is Other than the Loss of Competitive Privileges

1. The national coach or a specifically designated official should be responsible for enforcing the agreement.

2. Where it is alleged that the agreement has been violated, the coach should meet with the athlete, state the charges against the athlete and the penalty the coach plans to impose. The athlete should then be allowed to defend herself or himself. The coach then makes the decision.

3. If the coach decides that a violation has been committed and to impose a penalty, the coach should immediately inform the athlete and the elected team captain.

4. If the athlete wants to appeal the decision, the athlete should go to the team captain, and the team captain should talk to the coach about reconsideration.

5. The penalty should not go into effect until the team captain has talked to the coach about reconsideration.

B. Cases Where The Proposed Penalty is the Loss of Competitive Privileges.

1. The national coach or a specifically designated official should be responsible for enforcing the agreement.

2. Where it is alleged that the agreement has been violated, the coach should meet with the athlete, state the charges against the athlete, the penalty to be imposed, and the time and place of a hearing. The athlete should be given at least 12 hours to prepare a defence unless the urgency of the situation dictates otherwise.

3. A disciplinary panel should be established to conduct the hearing. It should be composed of the coach, the elected athletes' representative, and one other team official who is agreeable to both the coach and the athlete.

4. At the hearing, the athlete should be allowed to:

a) call evidence,

b) testify personally,

c) make submissions and arguments,

d) cross-examine witnesses from the "other side",

e) be represented by someone else.

5. The panel must decide whether the charges have been proven. If the athlete is convicted, the panel may decide to withdraw the athlete's privileges or whether to impose some other penalty. If the violation arose out of circumstances that could have been avoided in any way, the panel should make recommendations to the sports governing body for improvement. The panel must keep a written record of the grounds for its decision. Where possible, it should keep an audio or audio-visual tape of the hearing.

6. Neither the coach, nor the athlete, nor any other member of the association should release any information about the case until after the hearing.

7. If convicted, the athlete should be entitled to appeal the case, in writing, to the association's board of directors.

5. Sport Canada should amend the CAAP Guidelines for withdrawal of card status so they read as follows:

(b) Withdrawal — Lack of Commitment

If a national sports governing body wishes to withdraw carding of an athlete for alleged lack of commitment, it shall submit an application to the appropriate Sport Canada consultant that the athlete should be removed from the program. Such application should state:

(1) the specific rules that the athlete allegedly broke. These rules must be contained in the "Sport Governing Body/Carded Athlete Agreement" approved by Sport Canada;

(2) the material facts supporting the allegation that the rules were broken.

The sports consultant will then advise the athlete by registered mail that the athlete faces withdrawal, enclosing a copy of the sports governing body's letter, and inform the athlete that she or he has 30 days from receipt of the letter to defend herself or himself. Once the athlete's letter of defence has been received, the sports consultant will make the decision and notify both parties of the grounds for the

decision.

The sports consultant may decide to reinstate the athlete, to reinstate the athlete with a lesser penalty provided for under the agreement, or to withdraw the athlete's carded status. If the alleged violation arose because of circumstances that could be avoided, the sports consultant should make the appropriate recommendation.

It should be noted that failure of an athlete to achieve pre-set performance objectives does *not* in itself establish lack of commitment.

(c) Withdrawal—Gross Breach of Discipline

If a national sports governing body wishes to withdraw an athlete's card status for an alleged gross breach of discipline, it shall follow the procedures outlined above.

(d) Withdrawal—False Application

If the sports consultant has grounds to believe that an athlete has made false application with intent to obtain allowances for which the athlete would otherwise have been ineligible, or if an athlete retains funds for which the athlete is no longer eligible due to change of status, the sports consultant will recommend to the program director that the athlete's card be withdrawn, stating in writing the material facts supporting the allegation that false application was made. The program director will then notify the athlete by registered mail of the allegations and give the athlete 30 days from receipt of the letter to reply. If, after receipt of the athlete's defence, the program director decides that false application has been made, the director will withdraw the athlete's carded status immediately. If the alleged violation arose because of circumstances that could have been avoided, such as vaguely-worded guidelines, the program director should initiate the appropriate improvement.

(e) Reconsideration

In cases of (b) and (c) above, if the specific charges against the athlete were made for the first time in Sport Canada proceedings, the athlete has 10 working days after receiving the letter informing of withdrawal to file an appeal. The athlete's appeal should state specific reasons why the decision of the sports consultant should be overturned. It should be made in writing to the program director, who should decide on appeal.

If the appeal is rejected, or if after 10 working days the athlete has not filed an appeal, the national sports governing body may nominate a replacement to the A.A.P. Committee.

6. Sport Canada and the Ontario Ministry of Tourism and Recreation should require, as a condition of financial assistance, that the sports governing bodies clarify their rules governing representative team behavior that are not stated by "contract", according to the following guidelines:

1. That, as a goal, rules of behavior be stated with such clarity of language that no difficulty arises in their application to particular states of fact. Where an official has discretion of decision-making, either by delegation or as a result of vagueness in the rule, the official should be encouraged to confine his or her discretion by publishing guidelines on how the rule will be interpreted. Athletes and other sports governing members should be invited to respond to the published guidelines. If the official deems it appropriate, amended guidelines should then be issued.

2. That such rules do not interfere with the right to free speech and conform to the right to "informed consent" and confidentiality of medical records.

3. That the rules clearly state the penalty to be associated with each specific act or category of acts.

4. That the penalty of suspension from a representative team be reserved for those actions that blatantly disrupt a competition.

5. That the procedures for enforcing the rules be consistent with those recommended in B.4.

7. The Ontario Athlete Assistance Program should establish an appeal procedure similar to the one suggested for CAAP.

C. Legislative Protections

1. Sport Canada should seek clarification as to whether the *Charter of Rights* will be applied to government legislation, regulations and programs affecting sport. Sport Canada should then publicize the implications for all disciplinary cases in sport. Similar action should be taken at the provincial level by departments dealing with sport. If the governments reject the applicability of the charter to sport, Sport Canada should convene a federal-provincial conference to develop uniform procedural protection for athletes in every province.

2. The Ontario Minister of Labour should introduce an amendment to the *Ontario Human Rights Code* that would prohibit sexual discrimination in sport, by adding the following clause to Part I of Bill 7:

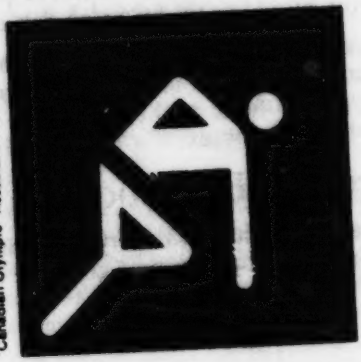
> Every person has the right to equal treatment in the enjoyment of membership and participation in any athletic organization or event that receives public funds or uses public facilities, without discrimination by reason of sex.

D. The Need for Education

1. Sport Canada and the Ontario Ministry of Tourism and Recreation should mount a joint educational campaign on the subject of athletes' rights.

E. Further Study

1. Sport Canada and the Ontario Ministry of Tourism and Recreation should jointly undertake an examination of children's rights in sport, and the rights of Canadian athletes vis-a-vis their international federations.



NOTES

1. Daniel D. Thompson, "Rights of Athletes in International Amateur Athletics as Related to a Code of Ethics for the Canadian Amateur Swimming Association", unpublished graduating thesis, School of Physical and Health Education, University of Toronto, 1981.

2. "Canadian swimmers sent home for drinking and breaking curfew", *The Globe and Mail*, August 28, 1978.

3. Interview with Dan Thompson, July 17, 1981.

4. There is authority to the effect that suspensions and expulsions stand on the same footing in terms of the application of the association's rules. See *Kemerer v. Standard Stock and Mining Exchange* (1927), 32 O.W.N. 295 (Middleton, J.A.)

5. This definition of Harmon, J. in *Byrne* v. *Kinematograph Renters Society Ltd.*, (1958), 1 W.L.R. 762, 784, was adopted by the Privy Council in *University of Ceylon v. Fernando*, (1960) 1 W.L.R. 223, at 231-233, cited by Lyell, J. in *Pett v. Greyhound Racing Association Ltd. (No. 2)*, (1970) 1 Q.B. 46, 65. See also the remarks of Lord Denning M.R. in *Enderby Town Football Club v. The Football Association Ltd. et al.*, (1971) 1 All E.R. 215, 219 (C.A.)

6. (1878), 11 Ch.D. 353, 362-363.

7. (1913), 29 T.L.R. 367.

8. (1890), 19 O.R. 747, 750 (Common Pleas Division).

9. *Kennedy v. Gillis et al.*, (1961) O.R. 878, 884 (H.C.J.).

10. Lord Killanin, "Eligibility and Amateurism", Killanin and Rodda, eds. *The Olympic Games* (New York: Collier Macmillan, 1976), pp. 143-153.

11. In *Pilon* v. *Peugeot Canada Ltd.* (1980), 29 O.R. (2d) 711, Galligan, J. of the Ontario High Court awarded damages for mental distress caused to a long-term employee by his precipitous and badly-handled dismissal without cause.

12. (1978), 19 O.R. (2d) 1, 5 (H.C.J.)

13. Personal correspondence with Andrew Barron, Feb.—April 1975.

14. "Skiers are called drunken roustabouts", *Toronto Daily Star*, Jan. 26, 1976, and "Ski coach denies team drank heavily on European tour", *The Globe and Mail*, Jan. 28, 1976.

15. "The imposter: he's real", *Toronto Daily Star*, July 23, 1976.

16. "Letter to the Editor", *Canadian Wrestler*, Vol. 3, No. 3 (Jan. 1979).

17. "Five Ontario tennis players sent home", *The Globe and Mail*, Aug. 18, 1978.

18. Barbara Yaffe, "Hairy volleyballer spiked from team", *The Globe and Mail*, Dec. 3, 1980.

19. Interview with Jerome Drayton, July 3, 1981.

20. "Blind sports association suspends top athletes", *The Globe and Mail*, April 7, 1981.

21. "Editor's reply", *Canadian Wrestler*, op. cit.

22. See Eric F. Broom and Richard S.P. Baka. *Canadian Governments and Sport* (Calgary: CAHPER, 1979), and Bruce Kidd, "The Canadian State and Sport: the Dilemma of Intervention", National Association for Physical Education in Higher Education, *Annual Conference Proceedings*, Vol. 2 (Champaign, Illinois: Human Kinetics, 1981), pp. 239-250.

23. See Richard C. Helmes, "Canadian Sport as an Ideological Institution", unpublished M.A. thesis, Queen's University, 1977; Bruce Kidd, "Athletes' Rights, the Coach and the Sport Psychologist", in Peter Klavora and Juri Daniel, eds., *Coach, Athlete and the Sport Psychologist* (Toronto: School of Physical and Health Education, 1979), pp. 25-39.

24. " 'Canadians choke' psychologist says", *Toronto Daily Star*, July 30, 1976.

25. Sheila Robertson, "Streamlined scheme cuts deadwood", *Champion*, Vol. 5, No. 1 (1981).

26. The irony is that for children's "mass participation" sport, the mottos encouraged by the National Coaching Development Program are "sport is for happiness", "the coach's main job is to help his athletes define and achieve their goals", and "losing can be triumph when you've given your best". National Coaching Development Program, *Coach's Manual, Level 2* (Toronto: Ministry of Culture and Recreation, 1976), p. 12.

27. According to Wally Halder, President of the Olympic Trust of Canada, only 20 per cent of the funds raised for the Canadian Olympic Association during the quadrienniel 1977-1980 came in the form of unconditional donations, while 46 per cent came as the result of sponsorship or licensing agreements. Although no exact data are available, the proportion of unconditional funds raised by the individual sports governing bodies is even less. Certainly sponsorship is the most sought after source; see the article, "Sport Woos Business Dollars", in *Sport Ontario News*, Vol. 8, No. 2 (1979). Sponsorship can be an added pressure for athletes. In the case of the Canadian Amateur Swimming Association, which receives $200,000 annually from Imperial Oil, "the board feels that swimmers have an obligation to put out extra so that the sponsor will think his investment is worthwhile." (Dan Thompson)

28. See Doug Gilbert, "Our Olympic athletes broke and embittered" and "COA boosts aid to Olympians", *The Gazette*, June 4 and June 13, 1975.

29. For the purposes of this study, we assumed that all athletes are adults (or that their rights are vested in a parent or guardian). Only 31 athletes, or eight per cent of the 1976 Olympic Team in Montreal, were younger than the legal age of majority in their respective provinces. But the question of children's rights in sport deserves careful examination, as we note later on in this study.

30. The only published statements of this kind have come in press interviews after disciplinary cases, and in the autobiographical writing by athletes published in the early 1970s. Perhaps the best general statement of this position is Jack Scott, *The Athletic Revolution* (New York: Free Press, 1971). But these sentiments can be heard in many locker rooms.

31. Bora Laskin, "Note on Civil Liberties and Legislative Power", *Canadian Constitutional Law*, 3rd. ed., (Toronto: Carswell, 1966) at p. 977ff. Professor Walter Tarnopolsky has adopted these categories for his *The Canadian Bill of Rights*, 2nd ed. (Toronto: McClelland and Stewart, 1975). See p. 3 of that study.

32. Ontario, *Royal Commission Inquiry into Civil Rights* (henceforth: *McRuer*) Vol. 1 (Toronto: Queen's Printer, 1968), pp. 4-5.

33. See *Enderby Town Football Club* v. *Football Association Ltd. et al.*, (1970) 3 W.L.R. 1021 (C.A.); *Baker* v. *Jones and Others*, (1954) 1 W.L.R. 1005 (Q.B.D.).

34. Revised Statutes of Ontario 1980, c. 95.

35. Revised Statutes of Canada 1970, c. F-25.

36. R.S.O. 1980, c. 34.

37. S.O. 1982, c. 7.

38. Statutes of Canada 1960, c. 44, amended by S.C. 1970-71-72, c. 38, s.29. See also R.S.C. 1970, Appendix III.

39. R.S.O. 1980, c. 484.

40. R.S.O. 1980, c. 325.

41. *The Law of the Constitution* (London: Macmillan, 1961), pp. 202-203. In his *Discretionary Justice* (Baton Rouge: Louisiana State University Press, 1969), pp. 32-33, K.C. Davis has criticized Dicey's definition of the "rule of law" for its failure to take into account the many examples where administrative discretion was exercised in the British government of his day. *McRuer* responds to this criticism, pp. 68-9.

42. (1959) S.C.R. 121, 140.

43. *McRuer*, p. 18.

44. *Dawkins* v. *Antrobus* (1881), 17 Ch.D. 615 (C.A.).

45. R.S.O. 1980, c. 95, s. 129(2).

46. For an analysis of one aspect of this doctrine, see "Note: The chilling effect in press cases: judicial thumb on the scales," (1980) 15 *Harvard Civil Rights - Civil Liberties Law Review* 685.

47. *McRuer*, p. 102.

48. G.H. Treitel, "The Agreement", in *Chitty on Contracts*, Twenty-

Fourth Edition (London: Sweet & Maxwell, 1977), pp. 21-62, at p. 54, paragraphs 111-112.

49. *Davis*, p. 176. Emphasis in original.

50. Differences in sentencing are analyzed by John Hogarth, *Sentencing as a Human Process* (Toronto: University of Toronto Press, 1971).

51. *Davis*, p. 25.

52. *McRuer*, pp. 79-82.

53. *Ibid.*, p. 102.

54. *Ibid.*, p. 62.

55. *Davis*, pp. 52-96.

56. *Ibid.*, p. 98.

57. *Ibid.*, pp. 142-160.

58. (1975), 11 O.R. (2d) 193, 203 (H.C.J.)

59. (1915) 3 K.B. 556 (C.A.).

60. (1915) 3 K.B. 556, 557.

61. (1968) 1 Q.B. 396.

62. *Combines Investigation Act*, R.S.C. 1970, c. C-23, as amended.

63. See, for example, *Re Cummings and Ontario Minor Hockey Association*, (1980) 26 O.R. (2d) 7 (C.A.), affirming (1978), 21 O.R. (2d) 389 (H.C.J.-Div. Ct.).

64. Sometimes this is called the "Mikado principle" after the famous chorus of the Gilbert and Sullivan work of that name: "A more humane Mikado never did exist....My object all sublime—I shall achieve in time—To let the punishment fit the crime."

65. Law Reform Commission of Canada, *Studies on Sentencing* (Ottawa: Information Canada, 1974). pp. 16-17.

66. *Stilwell* v. *Audio Pictures Ltd.*, (1955) O.W.N. 793, 794 (C.A.)

67. *Nicholson* v. *Haldimand-Norfolk Regional Board of Commissioners of Police*, (1979) 1 S.C.R. 311, 328.

68. *Re Webb and Ontario Housing Corporation* (1978), 22 O.R. (2d) 257 (C.A.).

69. *Enderby Town Football Club* v. *Football Association*; see also Harry C. Mallios, "What is Due Process?", *Athletic Administration*, Vol. 13, No. 4 (1979).

70. J.M. Evans, *de Smith's Judicial Review of Administrative Action, Fourth Edition* (London: Stevens, 1980), pp. 248-277.

71. *Lee* v. *The Showmen's Guild* (1952), 2 Q.B. 329, 341; applied in *Kennedy* v. *Gillis et al.* (1961) O.R. 878 (H.C.J.).

72. *Baker* v. *Jones et al.*, (1954) 2 All E.R. 553, 558-559 (Q.B.D.).

73. Edmonton: Alberta Department of Culture, Youth and Recreation, 1973, p. vi.

74. *Weir* v. *Saskatchewan Amateur Softball Association* (1979), 90 D.L.R. (3d) 707, 709-710 (Sask. Q.B., *per* Maher, J.).

75. *McRuer*, p. 233.

76. *McRuer*, pp. 1120, 1153.

77. Donald L. Schuck, "Administration of Amateur Athletics: The Time for an Amateur Athlete's Bill of Rights Has Arrived", (1979) 48 *Fordham Law Review*, pp. 53-82; Kenny Moore, "The Campaign for Athletes' Rights", American Academy of Political and Social Science, *Annals*, 445 (Sept. 1979), pp. 59-65. The *Amateur Sports Act of 1978* was passed by Congress on Nov. 8, 1978.

78. Doug Gilbert, "Fight to the finish will end injustice", *The Gazette*, June 3, 1976.

79. "Canadian champ fumes", *The Globe and Mail*, Jan. 26, 1980.

80. *Track and Field News*, for example, bases its annual world rankings on the following criteria, in order of priority: honors won, win-loss record, sequence of marks.

81. Lorne Sawula, "Volleyball Index," *Coaches Manual III* (Ottawa: Canadian Volleyball Association, n.d.).

82. After a review of the literature, R.J. Shephard concluded that "while profiles that combine anthropometric and physiological variables can account for 95% or more of the variance in performance of quite closely matched competitors... in many types of competition it is possible to catalogue atypical individuals who achieve striking success." *Human Physiological Work Capacity* (Cambridge: Cambridge University Press, 1978), p. 178. It is essential that "atypical individuals" be protected by performance tests.

83. William P. Morgan, "Prediction of Performance in Athletics", in *Klavora and Daniel*, pp. 173-186.

84. De Smith's *Judicial Review of Administrative Action, op. cit.* note 70,p. 263.

85. *Rv. Moore, Ex p. Brooks et al.*, (1969) 2 O.R. 677, 684 (H.C.J., *per* Stewart, J.)

86. Interview with Karel Swift, Ontario Student Assistance Program, Financial Administration Officer, University of Toronto, July 3, 1981.

87. See, for example, those established under the Canada Assistance Act.

88. "Streamlined scheme cuts deadwood", *Champion*, Vol. 5, No. 1 (1981).

89. Treitel, *loc. cit.*, note 48.

90. K.P. Parker, "Illegality and Public Policy," in *Chitty on Contracts*, Twenty-Fourth Edition, pp. 413-500, at p. 414, para. 903.

91. For example, two nationally carded swimmers were injured on the CYBEX machine, which measures muscle strength, during the CASA's national testing program at the University of Toronto, during Christmas 1980. Interview with Dan Thompson, July 17, 1981.

92. This possibility is discussed by Bruce C. Ogilvie, "The Sport Psychologist and his Professional Credibility", in *Klavora and Daniel*, pp. 44-55. Because of the risks in testing, the National Football Players' Association has a clause in its collective agreement stating: "No psychological or personality tests will be given to any player after he signs his first contract with an NFL club. A player is entitled to review the results of his (previously taken) tests upon request."

93. Gowan et al., "Bridging the Gap Between Sport Science and Sport Practice", in *Klavora and Daniel*, pp. 3-9.

94. (1980), 32 *N.R.* 145, 148

95. (1980), 32 *N.R.* 145, 161

96. (1980), 32 N.R. 361, 364 (S.C.C., *per* Laskin, C.J.S.C.)

97. Patient's Rights Association, *Patient's Rights Manual* (Toronto, n.d.) pp. 12-13. See also Nathan Hershey and Robert D. Miller, *Human Experimentation and the Law* (Germantown, Md.: Aspen Systems, 1976).

98. See, for example, Bernard M. Dickens (ed.), *Guidelines on the Use of Human Subjects* (Office of Research Administration, University of Toronto, 1979), pp. 24-36.

99. Ontario, *Report of the Commission of Inquiry into the Confidentiality of Health Information* (Toronto: Queen's Printer, 1980), pp. 29-33.

100. These considerations have led the National Football League Players' Association to seek representation in the selection of team doctors. In 1982, it proposed: "Given the tremendous physical risks inherent in the game, it is imperative that the union have equal voice in the critical area of safety and treatment of injuries. It is unacceptable that your safety is left to those who have never played the game.... We propose the Safety Committee (a joint player-management committee) would select and employ team doctors. Clubs now employ team doctors and management has too much control over their decisions—decisions that affect your career. Should you play after a slight concussion? How soon? Can we or should they prescribe bute? The doctors should owe loyalty to you, the patient, not to a club owner." *NFLPA Proposed Collective Bargaining Demands 1982* (Washington, 1981), pp. 13-14.

101. See, for example, Paul McLaughlin, "Machine provokes controversy", *Champion*, Vol. 4, No. 4 (Nov. 1980), and the subsequent exchange of correspondence between Drs. Hughson, Cywinski, and Houston.

102. Carolyn E. Thomas, "The Golden Girl Syndrome: Thoughts on a Training Ethic", NAPEHE, *Annual Conference Proceedings*, Vol. 2, 1980, pp. 139-142. The question of "informed consent" is closely related to the difficult question of liability for injury. In the United States, athletes have begun to take legal action when injury arises from harsh training. See Neil Amdur, "Athletes Testing Issue of Discipline", *New York Times*, Dec. 6, 1981. For a discussion of the Canadian law on liability for injury, see J. Barnes, *Sports and the Law in Canada* (Ottawa: author, 1981), pp. 403-516; and John J. Jackson, "Legal Liability: Supreme Court of Canada Judgment", *CAPHER Journal*, Vol. 48, No. 2 (Nov.-Dec. 1981), pp. 5-6.

103. Given the growing use of VTR by coaches, it might prove the most convenient. Its use was suggested by Mallios, "What is Due Process?"

104. Despite the *Guide's* statement that A cards are valid for *two years*, some sports governing bodies such as the Canadian Amateur

Swimming Association, require their athletes to reapply for them *every year*. This practice of demanding stricter than required performances—also exemplified by the Canadian Olympic Association's selection criteria—contributes to the climate that ignores athletes' rights.

105. *Marine Pipeline & Dredging Ltd. v. Canadian Fina Oil Ltd.* (1964), 46 D.L.R. (2d) 495, 502 (Alta. S.C., Appellate Division *per* Kane, J.A.).

106. *Todd* v. *Pitts Insurance Co.* (1980), 32 O.R. (2d) 173, 175 (H.C.J., *per* Robins, J.), concurred in by Osborne, J. in *Bragagnolo v. MacIvor et al; Pafco Insurance Co. Ltd.* (1981) 35 O.R. (2d) 364, 372 (H.C.J.).

107. (1975) Q.B. 326, 339.

108. This was predicted by the late Doug Gilbert, almost immediately after the International Olympic Committee revised its eligibility rule to permit athletes to receive unlimited training and competition expenses, including living stipends. See "IOC rule will cause trouble: maybe even unionism possible", *The Gazette*, Oct. 28, 1974.

109. Ontario Gymnastics Federation, "Federation Code of Conduct", 1979.

110. Ontario Lawn Tennis Association, "Rules and Regulations for OTA Sanctioned Tournaments", 1979.

111. Ontario Water Polo Association, "Trip Guidelines", 1979.

112. The practice of officials "taking the law into their own hands" is particularly prevalent in school sport. For a recent example, see Lorraine Locherty, "Parents challenge principal over punishment of football players" and "Principal praised for player decision", *Edmonton Journal*, Oct. 21 and Oct. 22, 1981.

113. Ontario Water Polo Association, *op. cit.*

114. Although the federal government has entered the field of sport by virtue of its spending power, it is not clear which section of the *Constitution Act* confers jurisdiction over sport and the question has never been tested in court. Hence, our proposals, if the *Charter of Rights* does not apply, will be addressed to both levels of government.

115. "Women protest ban against girl in Robbie soccer", *Toronto Star*, June 24, 1981.

116. *Re Cummings and Ontario Minor Hockey Association* (1979), 26

O.R. (2d) 7 (C.A.) and *Re Ontario Softball Association and Bannerman* (1978), 21 O.R. (2d) 395 (H.C.J. - Div. Ct.), *Re Ontario Human Rights Commission et al. and Ontario Rural Softball Association* (1979), 26 O.R. (2d) 134 (C.A.)

117. *The Human Rights Commission* v. *The Quebec Federation of Ice Hockey*, Quebec Superior Court, Nov. 15, 1978, Justice Perry Meyer.

118. Unesco, *International Charter of Physical Education and Sport* (Ottawa: Canadian Commission for Unesco, 1980).

119. *Ontario Human Rights Code*, R.S.O. 1980, c. 340, ss. 2(1)

120. (1978), 21 O.R. (2d) 389, 393

121. *Ibid*

122. (1979), 26 O.R. (2d) 134, 138

123. Sylvia Stead, "Prober expects lively reaction in study of boys, girls in sports". *The Globe and Mail*, April 17, 1982.

124. See Hart Cantelon, "High Performance Sport and the Child Athlete: Learning to Labour", paper presented to the First Regional Symposium, International Committee for Sport Sociology, Vancouver, June 1981. Useful introductions to the question of children's rights are Heather Berkeley, Chad Gaffield and W. Gordon West, *Children's Rights: Legal and Educational Issues* (Toronto: Ontario Institute for Studies in Education, 1978) and Jeffrey Wilson, *Up Against It: Children and the Law in Canada* (Toronto: Anansi, 1980). For a provocative discussion of the reasoning behind children's rights, see John McMurtry, "The Case for Children's Liberation", *Interchange* 10 (3), 1979-1980, pp. 10-37.

125. Terry Orlick and Cal Botterill, *Every Kid Can Win* (Chicago: Nelson Hall, 1974); T.A. Tutko and W. Bruns, *Winning is Everything and Other American Myths* (New York: Macmillan, 1976).

126. See, for example, John Boivin, "Toronto sprinter ineligible for using anabolic steroids", *The Globe and Mail*, March 27, 1982.

127. For example, between 1970 and 1980, the federal Fitness and Amateur Sport budget increased five times. See Hon. Gerald Regan, *Challenge to the Nation* (Ottawa: Fitness and Amateur Sport, 1981), p. 27.

128. See, for example, Norbert Elias, "The Genesis of Sport as a Sociological Problem", in Eric Dunning, ed., *Sport: Readings from a*

Sociological Perspective (Toronto: University of Toronto Press, 1972), pp. 88-115.

Appendix I

Due Process Procedures Established by the Canadian Amateur Swimming Association

Due Process Procedures

International Games Situation:
When an event takes place which requires substantial disciplinary action, the following procedures will be carried out:

1. *The presumed offender will immediately go before a panel for disciplinary action.* This must consist of three of the four following personnel:

   a) Chef de Mission;

   b) General Manager;

   c) Head Coach;

   d) Swimmers' Representative (i.e. Team Captain or Senior Team member over twenty-one years old).

2. *This Panel must keep the following considerations in mind:*

   a) Team Image;

   b) Public Image;

   c) Punishment in the eyes of justice.

3. *The offender will be granted the following rights of Natural Justice:*

   a) Right to be considered innocent until proven guilty;

   b) Right to freedom of speech;

   c) Right to contact a relative or lawyer;

   d) Right to call eye witnesses;

   e) Right to a later hearing before C.A.S.A. Ethics Committee.

International Tours
All procedures will be the same as in the international games situation except for factors which affect team structure. In this case, the make-up of the disciplinary panel will be different.

1. *Dual Meet Tours* — Disciplinary Panel, all must be present.

   a) General Manager;

   b) Head Coach;

   c) Swimmers' Representative (i.e. Team Captain or Senior Team member over twenty-one years old).

2. *College Tours* — Disciplinary Panel, all must be present.

   a) Head Coach

   b) Assistant Coach

   c) Swimmers' Representative

3. *Speedo/Tilt Tours* — Disciplinary Panel, all must be present

   a) Head Coach

   b) Manager

   c) Swimmers' Representative

4. *Independent competitions where individuals and small club teams represent Canada.*

   In this situation, reports of misconduct are to be forwarded to the Canadian Amateur Swimming Association's Ethics Committee.

Panel Guidelines for International Games Situations & International Tours

1. Only the Disciplinary Panel has the right to suspend or expel an athlete, coach or management staff from the team environment.

2. Three of the four members of the Disciplinary Panel must be present. If this quorum is not present, expulsion will not be permitted and other less severe action must be taken.

3. Action must be taken within twelve hours of the incident.

4. Neither the panel nor the alleged offender shall release or publish any information publicly or privately until after the time has elapsed for an appeal.

5. If expulsion takes place in a foreign environment, the case will automatically come before the Board of Directors, Ethics Committee for review. Appeals, if desired, may be made then by the presumed offender.

6. The Disciplinary Panel is expected to file a written report by the General Manager.

Appeal Procedures for Accused Violators of C.A.S.A. Code of Ethics Guidelines

The following information must be submitted in writing:

a) The date or dates of the supposed violation;

b) The place of supposed violation;

c) The full name of the accused member, his/her address, and personal representative to whom all future notices regarding the charge are to be directed;

d) A precise and concise statement about the facts of the supposed violation plus any other relevant information.

Procedures for Submitting Charges Against Competitors, Coaches, and Officials Who Violate Code of Ethics Guidelines

a) The date or dates of the violation;

b) The place of violation;

c) The full name of the complaining member, his/her address and his/her personal representative to whom all future notices regarding the charge may be directed;

d) The full name of the member against whom the violation occurred;

e) The full name of the member in violation, his/her address and his/her personal representative to whom all notices may be directed;

f) The regulation or regulations violated;

g) A precise and concise statement about the facts of the violation and any other information considered relevant.

Appendix II

The U.S. Olympic Committee's Athletes Advisory Committee's Proposed Athletes' Bill of Rights

SEC. 303(a) No national governing body, educational institution, or sports organization may deny or threaten to deny any eligible amateur athlete, coach, trainer, manager, or administrator the opportunity to

participate in any sanctioned unrestricted international competition if selected by a national governing body or one of its members, nor may it censure subsequent to the event, or otherwise penalize for having participated in such competition, any athlete, association, institution, corporation, educational institution, or school, coach, trainer, manager, or administrator.

(b) No national governing body, educational institution or sports organization may deny or threaten to deny any eligible amateur athlete, coach, trainer, manager, or administrator the opportunity to participate in any international competition (except as provided in subsection (a), nor may it censure subsequent to the event, or otherwise penalize for having participated in such competition any athlete, associate (sic), institution, corporation, educational institution, or school coach, trainer, manager, or administrator, unless the national governing body, educational institution, or sports organization can show that such denial or censure is reasonable.

Enforcement

SEC. 304. (a) (1) Whenever any person is engaged in, or there are reasonable grounds to believe that any person is about to engage in, conduct resulting in a denial of opportunities to participate under section 303 of this title, a civil action for preventive relief, including an application for preliminary or permanent injunction, temporary restraining order, or other applicable order, may be instituted by the amateur athlete, coach, trainer, manager, or administrator claiming to be aggrieved, or on behalf of the athlete, coach, trainer, manager, or administrator by the United States Olympic Committee, by any national governing body, or by any sports organization of which such individual or institution is a member.

(2) The district courts of the United States shall have jurisdiction to enjoin the commission of any acts or threatened acts which would result in a denial of the opportunity to participate.

(3) Upon finding that a person is engaged in or is about to engage in conduct resulting in a denial of rights under section 303 of this title, the court shall issue such preliminary or permanent injunction, temporary restraining order, or other applicable order.

(b) (1) Upon mutual agreement of the parties, actions for relief under the provisions of this title may be submitted to any regional office of the American Arbitration Association for binding arbitration.

(2) The arbitration shall proceed in accordance with the rules of the

American Arbitration Association in effect at the time of the filing of the action. The arbitration shall be before a panel of three arbitrators and shall begin as soon as possible but, in any event, no later than thirty days after the dispute is submitted to the American Arbitration Association. However, if the Association determines that it is necessary to expedite the arbitration in order to resolve a matter relating to an amateur athletic competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Association to do justice to the affected parties, the Association is authorized, upon forty-eight hour notice to the parties, to hear and decide the matter under such procedures as it deems appropriate.

(3) Each contesting party may be represented by counsel or by any other duly authorized representative at the arbitration proceeding.

(4) The parties may offer evidence as they desire and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. The arbitrators shall be the sole judges of the relevancy and materiality of the evidence offered. Conformity to statutory rules of evidence shall not be necessary.

(5) Upon application, the district courts of the United States shall have jurisdiction for the purpose of issuing subpoenas to compel the attendance and testimony of witnesses and the production of documents which the arbitrators reasonably deem to be necessary or advisable for a better understanding of the dispute.

(6) All decisions by the arbitrators shall be by majority vote unless the concurrence of all is expressly required by the contesting parties. The arbitrators shall make their decisions within thirty days after the closing of the hearings.

(7) The hearings may be reopened by the arbitrators upon their own motion or upon the motion of any contesting party, at any time before the decision is made. If reopened the arbitrators shall make their decision within ninety days of the close of the original hearing.

(8) The district courts of the United States shall have jurisdiction to enforce decisions of the arbitrators. Such action may be brought by any party to the final decision.

Appendix III

Sports Governing Body/Carded Athlete Agreements

Canadian Cycling Association

THIS AGREEMENT made in duplicate the day

of ,19

BETWEEN: CANADIAN CYCLING ASSOCIATION, a corporation incorporated under the laws of Canada

(Hereinafter referred to as the ("Association")

OF THE FIRST PART

and

of the City of ,in the Province of

(hereinafter referred to as the "Team Member")

OF THE SECOND PART

and

of the said City of , in the Province of , the parent

(hereinafter referred to as the "Parent")

OF THE THIRD PART

WHEREAS the Association is an incorporated body composed of individuals and clubs throughout Canada, dedicated to the advancement and promotion of the sport of cycling in Canada,

AND WHEREAS, as part of its activities, the Association organizes and operates a National Cycling Team (hereinafter referred to as the "Cycling Team") to represent it and Canada in amateur cycling competitions throughout the world,

AND WHEREAS the Team Member has been duly nominated by the Association in accordance with its by-laws, rules and regulations to be a member of the Team and to partake fully in the programme designated for the Team by the Association and its officers,

AND WHEREAS the Team Member being under the age of twenty-one, the Parent hereby joins in this instrument and in so doing concurs in the Team member joining the Team and partaking fully of its activities.

NOW, THEREFORE in consideration of the mutual promises hereinafter provided, the parties hereto agree as follows:

1. The Association hereby covenants and agrees to direct the Team Member's programme of training and to prepare the Team Member for competition at international level, all in accordance with the efforts of the Team Members. The details of such programme are to be determined by the Association and its officers from time to time.

2. The Association covenants and agrees to provide the Team Member with his transportation to and from national and international cycling competitions for which he is selected. The Team Member who qualifies for "student stand-by" fares must fly stand-by unless otherwise directed.

3. The Team Member hereby convenants and agrees to participate fully in the Association's cycling training programme as determined from time to time by the officers of the Association and he further undertakes and agrees to participate in, to the best of his ability, all cycling competitions which he will be directed to enter by the officers of the Association.

4. The Team Member agrees that acceptance of a place in the National Team involves a commitment to the Team for at least three years and that his educational employment and personal responsibilities will be arranged as far as is possible to permit fulfillment of this commitment.

5. Any Team Member who without good cause abandons his National Team position or who is dismissed from the Team because of violation of the terms of this agreement may be held liable to repay the Association for all or part of the expenses incurred by the Association on his behalf during his participation in the National Team programme.

6. The Team Member hereby covenants and agrees to dress and use Team uniforms and insignia whenever so directed by the officers of the Association and to deport himself at all times in a manner that will be a credit to the Team as a whole, to the Association and to Canada.

7. The Team Member covenants and agrees to safeguard all clothing and equipment loaned to him by or through the Association and he shall not lend or trade any of such equipment without the specific authorization of the officers of the Association. All such equipment shall be the responsibility of the Team Member and it will be returned by him to the appropriate official of the Association upon request. In the event that any of such equipment is not so returned by a Team Member, the Team Member shall pay to the Association a sum equal to such equipment's retail value. He further undertakes to be responsible for and to declare to all responsible custom and revenue officers all or any clothing and equipment transported by him across national boundaries and he hereby agrees to indemnify and save harmless the Association in the event of any breach by him of this provision.

8. The Team Member hereby covenants and agrees to abide by the general rules and regulations of the Cycling Team as circulated from time to time by the Officers of the Association and he hereby acknowledges the right of the officers of the Association vested by the Association with such authority to dismiss him from membership in the Cycling Team for cause at any time in which event the parties hereto acknowledge the termination of all rights and obligations herein provided.

9. The Team Member agrees to assist where possible with furthering the aims and promotion of the Association including coaching assistance to developing cyclists both during and on retirement from his years of competition.

10. The Team Member hereby covenants and agrees that twenty-five percent of the value of prizes, funds or benefits accruing to him in any way arising from his prowess as a cyclist during his periods of organised competition with the Cycling Team shall be received by the Association in consideration of the benefits and advantages accruing to him hereunder so long as this agreement shall be in force between the parties.

Equipment:

1. Team Members will be responsible for the care and maintenance

of their own equipment. It is the responsibility of the individual to make sure that he has all necessary equipment when travelling. When an official mechanic is a member of the team, he will inform all Team Members of the equipment required.

2. Each Team Member must keep his own records of all loaned equipment, including clothing in his possession. Note that from the Agreement, you could be held responsible for the lost equipment.

3. No Team Member should publicly denounce or slander equipment he is using. He should attempt to assist the supplier by good results and exposure. He should attempt to promote the manufacturers if questioned by the public. Team Members should familiarize themselves with the products of Official Suppliers.

Training Rules:

1. A Team Member is expected to answer all correspondence, and promptly fill in all forms necessary for the administration.

2. A Team Member is expected to appear at all training sessions, camps and courses unless otherwise excused. A one hundred percent effort is expected in training, and repeated lack of effort can only be interpreted as lack of interest.

3. A Team Member should not engage in training or competitions outside the programme unless such training or competitions is sanctioned by the national coach.

4. The Team Members are reminded that they must prepare for the event(s) for which they were originally selected unless otherwise instructed by their national coach.

5. The Team Member should show respect for their coaches whether or not he is in technical agreement or disagreement with them.

6. Any Team Member found to be out of condition and not in satisfactory shape will forfeit his place until he/she returns to the athletic form required.

7. Every Team Member must undergo a complete physical examination by his doctor prior to the Spring training session. A copy of the doctor's report must be sent to the National Coach prior to February 1st.

Personal:

Team Members will conduct themselves in a manner that will at all times benefit the National Team:

1. The Team Members should attempt to understand, assist and respect each other in order to best live as individuals.

2. Team Members are reminded that the public sees them as representatives of their country and of the Association, not as individuals, their conduct must always respect this heavy responsibility.

3. Late evening dating during the competitive season will not be allowed, unless approved by your coach.

4. Team Members must make an attempt to please the press and news people. Under no circumstances should a member make statements against the Association, National Team or race officials. Polite clear answers are the objects of an interview.

5. Smoking or drinking in public places where a Team Member or Members could possibly be recognized as a member of the National Cycling Team will not be tolerated in any form, unless approved beforehand. During the training and competitive season, no smoking or drinking will be tolerated unless approved. Any involvement with drugs will mean automatic suspension.

6. The use of foul language will not be tolerated.

7. Absolute respect must be paid to all private property, and accommodations left as you found them.

8. Each Team Member is requested to get adequate supplementary medical and hospital coverage through a family policy or on his own. It is understood and agreed as set forth in this clause that the Association accepts no liability or responsibility for injury or accident to a Team Member while he is engaged in his normal duties, training or competition, and the Team Member hereby acknowledges the same and agrees to indemnify and save harmless the Association from any claim or demand arising therefrom.

9. Each Team Member must make sure that he is completely familiar with F.I.A.C. and Olympic eligibility rules.

10. Any member who does not abide by the Team Rules, including the unwritten rules of the past, will be liable to penalization by:

1. Withdrawal of allowance,

or

2. Withdrawal of competitions privileges including entries in races,

or

3. Immediate dismissal from the Team.

11. The Parent hereby approves the participation by the Team Member as such and hereby gives his/her agreement to each and every paragraph herein.

12. It is understood that in the construction of this Agreement, the feminine gender shall be substituted for the masculine, the plural for the singular and the singular for the plural where such substitution shall be required by the context of this agreement.

IN WITNESS WHEREOF the Association has hereunto affixed its corporate seal and the hands of its duly authorized officers on its behalf and the Team Member and Parent have hereunto set their signatures and seals.

SIGNED, SEALED and DELIVERED
in the presence of:

Canadian Cycling Association

_____

_____

_____

Team Member

_____

_____

Parent

NATIONAL CANADIAN CYCLING TEAM

AGREEMENT

DATED THIS DAY OF , 19

NAME:

Canadian Figure Skating Association

C.F.S.A. RULES OF CONDUCT

1. Any skater receiving financial assistance under the C.F.S.A. Skaters' Development Program, participating in the Canadian Championships, or is selected to represent Canada in an International Competition, must agree to the C.F.S.A. Rules of Conduct prior to the acceptance of financial assistance or International assignment. Such agreement shall be in writing and shall be for the duration of the assignment or financial assistance term.

2. If a skater desires to appeal any personal application of the Rules of Conduct, an appeal may be filed within 24 hours with the Chairman of the Skaters' Development Committee or the President. Such an appeal will be immediately investigated and the findings therefrom will be binding.

3. Skaters shall agree that:

a) There will be no possession or use of any drug, excluding prescribed medical drugs, which should be registered with the responsible Official before the event.

b) Skaters under the age of 18 will not possess or use alcohol or tobacco in any form.

c) Skaters over the age of 18 will not possess or use alcohol or tobacco in any form within the immediate area of a residence, ice surface or competition site and will not supply any substances to others.

d) Any damage to property shall be assessed to the account of the occupants.

e) Skaters shall conduct themselves at all times in a reasonable and acceptable manner.

Unacceptable behaviour shall include:

i) Unsportsmanlike conduct.
ii) Breaking training or curfew (training seminars).
iii) Willful damage to property.
iv) Committing any act which is considered an offence under any duly promulgated law.

4. Contravention of these guidelines is sufficient grounds for a skater to be sent home at his/her own expense and/or removal from the Financial Assistance program.

5. Contravention of these guidelines will be dealt with by the C.F.S.A. who shall implement such action as necessary for just cause. Such infractions of the above could lead to a temporary or life-time suspension of competitive activity.

C. F. Dover
President

COMPLETE AND RETURN THIS FORM TO:

C.F.S.A.
333 RIVER ROAD
VANIER, ONTARIO
K1L 8B9

C.F.S.A. RULES OF CONDUCT

I, _____ certify that I have received
(ATHLETE'S NAME)
a copy of the C.F.S.A. Rules of Conduct and that I agree to conform to such rules and conditions as long as I am in receipt of financial assistance through the Skaters Development Financial Assistance Program.

DATE:

ATHLETE'S SIGNATURE

WITNESS

SIGNATURE OF PARENT
OR GUARDIAN IF
ATHLETE UNDER 18
YEARS OF AGE

THIS AGREEMENT made in duplicate the day of , 19

BETWEEN: CANADIAN SKI ASSOCIATION
a corporation incorporated under the laws of Canada

(hereinafter referred to as the "Association")

OF THE FIRST PART

— and —

of the City of , in the Province of

(hereinafter referred to as the "Program Member")

OF THE SECOND PART

— and —

of the said City of , in the Province of , the parent or guardian of the Program Member.

OF THE THIRD PART

WHEREAS the Association is an incorporated body composed of member clubs throughout Canada dedicated to the advancement and promotion of the sport of skiing in Canada.

AND WHEREAS, as part of its activities, the Association organizes and operates a Cross Country Ski Team Program (hereinafter referred to as the "Ski Team Program") to represent it and Canada in amateur Ski Competitions throughout the world.

AND WHEREAS the Program Member has been duly nominated by the Association in accordance with its by-laws, rules and regulations to be a member of the Ski Team Program and to partake fully in the programme designated for the Ski Team by the Association and its officers.

AND WHEREAS the Program Member being under the age of eighteen the parent hereby joins in this instrument and in so doing concurs in the Team Member joining the Ski Team Program and partaking fully in its activities.

NOW THEREFORE in consideration of the mutual promises hereinafter provided, the parties hereto agree as follows:

1. The Association hereby covenants and agrees to provide for the Program member a full programme of training directly or through the Division coach and to prepare the Program member for Cross Country Ski competition up to the highest international level, all in accordance with the efforts of the Program members. The details of such programme are to be determined by the Association and its officers from time to time.

2. The Association covenants and agrees to provide the Program member with accomodation and transportation to and from international ski competitions for which he has been selected. The Program member who qualified for "student stand-by" fares must fly stand-by unless otherwise directed.

3. The Association will negotiate with Sport Canada on the Program members behalf to obtain the best possible financial support for those qualified.

4. The Association will negotiate with the Suppliers on the Program members behalf for equipment supply.

5. The Association covenants and agrees to provide liability insurance for Program members while on official Team assignments.

6. The Association covenants and agrees to provide accident insurance for Program members through the National Accident Insurance program of the Sports Federation of Canada, within the limits of the master policy with the Life Insurance Company of North America.

7. It is understood and agreed as set forth in this agreement, that the Association accepts no liability or responsibility for injury or accident to the Program member and he hereby acknowledges the same and

and agrees to indemnity (sic) and save harmless the Association from claim or demand arising therefrom.

8. The Program member hereby covenants and agrees to participate fully in the Association's ski training programme as determined from time to time by the officers of the Association and he further undertakes and agrees to participate in to the best of his ability all Cross Country Ski competitions which he will be directed to enter by the officers of the Association.

9. The Program member undertakes to be responsible for and to declare to all responsible custom and revenue officers all or any clothing and equipment transported by him across national boundaries and he hereby agrees to indemnify and saves harmless the Association in the event of any breach by him of this provision.

10. The Program Member undertakes to abide by the Program Rules and Regulations, and in the event of an infraction thereof will be liable to penalization by:

a) Withdrawl of support
or
b) Withdrawal of sanction to National and International Competition
or
c) Suspension or immediate dismissal from the Ski Team Program.

11. It is understood that in the construction of this agreement the feminine gender shall be substituted for the masculine, the plural for the singular and the singular for the plural where such substitution shall be required by the context of this agreement.

NATIONAL CROSS COUNTRY SKI TEAM PROGRAM

MEMBERS CONDUCT RULES AND REGULATIONS

The purpose of these rules are to safeguard the image of the Canadian Ski Teams, its coaches and the individual athletes both at home and abroad.

To protect the program members and coaches from undue mental strain due to lack of respect or consideration by other members.

To ensure the best possible environment for the athletes and coaches to work in and the team as a whole to be successful.

To eliminate team internal unrest, distraction and dissatisfaction brought on by unresponsible behaviour of individual members.

To meet all the criteria for competitive excellence as laid down by Sport Canada who provides the funding for the program.

To satisfy the members of the National Suppliers Pool whose material and financial contribution is of major importance to the success of the program.

1. The program members will conduct themselves at all times in a manner beneficial to the Ski Team program.

2. Foul language on or off the track will not be tolerated.

3. Clean appearance and attire is essential.

4. Respect and consideration towards the public, the coaches, and the other athletes is a must.

5. Team and self discipline is to be exercised both in training camps and team travel.

6. Wastefulness with food must be avoided.

7. Good care is to be taken of personal as well as team equipment whether or not it is paid for by the members personally. Absolute respect is to be paid to private property such as accomodation.

8. Smoking will not be tolerated.

9. Any involvement with drugs will mean suspension.

10. Consumption of alcoholic beverages is discouraged. While with the team, drinking in public places needs the approval of the coach (beer excepted).

11. Juniors under the legal drinking age will not be permitted to consume alcohol while with the team.

12. Dating amongst members or members and coaches while in camp or on team travel will be discouraged.

13. Members will only drive team vehicles with the coaches permission.

14. The members are responsible for the care and maintenance of their own equipment as well as carrying the necessary tools and waxes needed for training and competition.

15. The members will appear at all training camps and races scheduled and paid for by the National program well prepared and in keeping with his state of training as agreed to by the National Program coaches.

16. The members must report one (1) week in advance to the National Office, their intent of not attending a camp. Notice has to be in writing giving cause, but can be preceded by an advanced phone call in case of time shortage.

17. Members will keep personal training and racing records as instructed by the Technical staff and submit to the office upon request.

18. Upon joining the program, the members will undergo a complete physical check up by their doctor once a year and his report is to be sent to the Technical Director.

19. Members must answer promptly all correspondence from the National office and keep copies of such.

20. Members shall not contract with Manufacturers, Importers or Suppliers of skiing equipment and clothing for sponsorship (material or financial), employment or endorsement contracts, without approval in advance by the Technical Director.

21. If available through the program, members will only use equipment and clothing provided by the members of the National Suppliers Pool.

22. Members will not publicly denounce or slander equipment he is using nor shall he trade or sell any of the equipment or clothing provided by the program without the consent of the coaches.

23. Members should attempt to please the press and never make statements against the Association or the National Team program or the officials unless approved and witnessed by the coach.

24. Members will at all times abide by the rules of the International Ski Federation (F.I.S.) and the Canadian Ski Association.

IN WITNESS WHEREOF the Association has hereunto affixed its corporate seal and the hands of its duly authorized officers on its behalf and the Program member and Parent have hereunto set their hands and seals.

SIGNED, SEALED and DELIVERED

in the presence of: CANADIAN SKI ASSOCIATION

For Junior members under 18 years of age as of time of signing, I the parent of the Program member hereby approve of his/her participation in the Program and agree to each and every paragraph herein

Member

Parent

Canadian Track and Field Association

CTFA ATHLETES COMMITMENT

The purpose of this document is to outline the roles, rights and obligations of athlete *and* the Canadian Track and Field Association to each other in the mutual pursuit of international excellence objectives.

The statements are designed to assist athletes, coaches and administrators to understand the opportunities available for the development of the national team within the CTFA program.

In the terms and conditions of the Sport Canada Athlete Assistance Program, each national sport governing body is asked to produce a 'Sport Governing Body/Carded Athlete Agreement'. This paper is intended to meet the requirement of Sport Canada for eligibility in the Athlete Assistance Program.

CTFA

1. The Association is an incorporated body dedicated to the advancement and promotion of the sport of track and field within Canada.

2. As part of its activities, the Association organizes and operates a Track and Field Team to represent it and Canada in amateur track and field competitions throughout the world.

3. The Team Member has been duly nominated by the Association in accordance with its rules and regulations to be a member of the Track and Field Team and to partake fully in the programme designated for the Track and Field Team by the Association and its officers.

4. The CTFA Carded Athletes receive all benefits for which he/she's eligible from Sport Canada Game Plan.

5. The CTFA provides (according to the National Program) planned training camps and competitions in Canada and abroad within the limitations of available resources.

6. The CTFA assists in the provision of coaching expertise through the National Event Coaches or National Event Coordinators. It is assumed that on a day-to-day basis, national team athletes work with a personal coach.

7. The CTFA provides program information in the form of Communiques, Journals and correspondence through the office or National Event Coordinators.

8. The CTFA provides National Team equipment in accordance with contracts between the CTFA and equipment suppliers.

ATHLETES COMMITMENTS

1. The Team Member agrees to dress and use Track and Field uniforms and insignia whenever he/she is representing the National Team and the CTFA and to conduct him/herself at all times in a manner that will be a credit to the Track and Field Team as a whole and to the Association.

2. The Team Members will conduct themselves in a manner that will at all times be beneficial to the National Team.

3. Respect and consideration must be shown toward the public.

4. Proper dress is important and all Team Members must make attempts to see that their appearance is acceptable. During "official travel" Team Members should wear official clothing (where provided).

5. A Team Member should be aware that in most instances they are guests and should always conduct themselves as such. This is extremely important and members who disregard this fact will be dealt with severely.

6. Team Members are reminded that the public sees them as programme members and not individuals. Although at times, this may be difficult, it must be remembered that they represent CTFA and the National Team in addition to themselves.

EQUIPMENT

1. The Association has an exclusive right to negotiate with the Suppliers on the Team Members' behalf for Equipment supply.

2. Team Members will be responsible for the care of their own equipment.

3. Team Members must abide by the equipment rules as laid down by the Association. Team Members are responsible for completely understanding the IAAF rules and strictly adhering to them unless otherwise advised by Programme Officials.

TRAINING AND COMPETITION RULES

1. Each Carded Athlete and Team Members should have a personal specialist coach. Where an athlete does not have access to a specialist coach the National Program Director will propose one or the National Event Coordinator will be the Technical-Consultant.

2. The Carded Athletes have to be incorporated in the Canadian

National Program (USA students). It is expected that all carded athletes will be involved in the National Team Program: Efforts will be made for athletes attending educational institutions outside of Canada to be part of the national program wherever the programmes of foreign institutions and the CTFA are compatible. The CTFA will assist athletes to negotiate with their colleges/universities wherever necessary.

3. Team Members must provide annual Training Charts to the National Program Director.

4. Team Members will keep personal training and competition records as instructed and have them available upon request of the National Program Director.

5. The Team Members must report to the National Event Coordinator and Program Director their intention of not attending a training camp or competition.

6. Athletes may periodically be asked to perform "Fitness Tests" or "Performance Trials" to determine their level of preparedness and competition readiness. If athletes are not fit, they may be asked to withdraw from a national team activity until such time as they return to a stated fitness level.

7. The CTFA will endeavour to identify medical doctors with the requisite expertise in sports medicine/sports science. Where such expertise is available, every Team Member should undergo a complete physical examination by a doctor prior to the fall, training session. A copy of the doctor's report must be sent to the National Program Director. The CTFA will develop a proforma for the annual medical evaluation.

8. Team Members are obliged to send every month the information card to the National Program Director with test and competition results included. Athlete will be supplied with copies of the information card at the beginning of each annual cycle.

9. The following events comprise the mandatory competitions within the CTFA Program:

(a) Top events: Olympic Games, Pan Am Games, Commonwealth Games, World Championships, World Cup, World Student Games etc.

(b) Important Events: Canadian Championships and Dual meets.

(c) Planned Event Competitions by the Event Coordinators.

(d) Planned National Training camps (prior to Olympic Games, World Championships etc.).

(e) Planned Event Training Camps by the Event Coordinators. (Items c, d and e will be determined by mutual agreement of the athlete in conjunction with the National Program Director, the Event Coordinator and Personal Coach of the athlete).

PERSONAL

1. Team Members must answer promptly all correspondence from the National Office and Event Coordinators.

2. Provide promptly the National Office and Event Coordinator with any new address and telephone number.

3. Abuse of alcoholic beverages or drugs will result in automatic suspension.

Any Team Member who does not abide by the Team Rules will be liable to penalization by any or all of the following:

a) Withdrawal of allowance.

or

b) Withdrawal of competition privileges including entries in events.

or

c) Immediate dismissal from the team.

Any disciplinary action taken by the CTFA will be reviewed by the CTFA Board of Directors. On a day-to-day basis the National Program Director, or Delegation Leader and his/her designate (in the case of travelling teams) are responsible for ensuring that all parties (i.e. CTFA, managers, coaches, administrators, and athletes) fulfil the commitments listed under its agreement.

Athletes' Signature:

Personal Coachs' or Technical
Consultants' Signature:

National Program Directors' Signature:

Canadian Wrestling Association

C.A.W.A. ATHLETES AGREEMENT

The following list of requirements constitute the commitments which you must make to qualify as a nationally carded wrestler or as an aspirant for the position of nationally carded wrestler. Failure to meet the obligations can lead to declassification from the program.

COMMITMENT:

I. If selected you MUST participate in the following programs or events.

(a) Summer Training and Competition Program

(b) Senior Pan-Am Championships

(c) Junior or Senior World Championships

(d) Winter Training over the Christmas Holidays

(e) Cerro Pelado Tournament in Cuba

(f) World Cup

(g) Canadian Championships

II. You MUST submit to the Technical Director, a monthly record of your competitive performance and training program which is signed by your personal coach.

III. You are required to participate in all physiological or psychological testing programs approved by the C.A.W.A. Technical Committee.

I hereby acknowledge that I have been carded to compete in the kg. weight category. I agree to compete in this weight category for any trial and/or competitions that the national coach deems appropriate.

I hereby acknowledge my responsibility to fulfill all commitments stated above, and recognize that failure to meet these obligations could mean loss of carded status.

IV. Submission of a yearly training chart.

V. Submission of personal information form.

AGREEMENT

As a member of C.A.W.A.'s nationally ranked wrestling team, I hereby agree to fulfill the requirements of the Carded Athletes Training Program as herein stated as commitments.

I understand that through my personal coach and C.A.W.A. Competitors Representative (Mr. Sean Barry) that I have input into the Carded Program as designed by the C.A.W.A. Technical Committee.

(Date

Wrestler's Signature

(Date

Coach's Signature

Appendix IV

INFORMED CONSENT

I, , agree to participate in an Athlete Assessment Camp at the University of Toronto sponsored by the Canadian Orienteering Federation and the School of Physical and Health Education. I understand that the primary purpose of these assessments is to provide information about my present level of physical fitness and my ability to perform as a high level athlete. I understand that this program involves a series of procedures which constitute exercise fitness tests designed to provide information about my muscle strength and cardiovascular fitness. The Athlete Assessment consists of:

1. Measurement of height, weight, body girths and thickness of skinfolds (for determination of body fat).

2. Measurement of lung capacity (by blowing into a small gasometer).

3. Measurement of the strength of various muscle groups of the leg by kicking against a levered device (CYBEX procedure), and by performing a standing vertical jump. Hand grip strength is measured by squeezing a strong spring (handgrip dynamometer).

4. A graded exercise test to measure maximal oxygen consumption (capacityto do physical work) by running on a motor driven treadmill. The work level will begin at an intensity that I can easily accomplish and will advance in stages depending on my work capacity. During the test my expired breath and heart rate will be monitored.

5. Collection of two (2) small blood samples from a fingertip prick by trained personnel. Complications of such blood sampling rarely arise but may include the slight risk of infection.

6. Several tests of physical performance performed outdoors (12 minute run for distance, 400 metre run, sit and reach flexibility test).

7. Measurement of anaerobic capacity by riding a stationary bicycle all-out for 30 seconds (Bar-Or Test).

8. I further understand that just as with other types of tests involving exercise, there are potential risks. These may include transient lightheadedness, fainting, chest discomfort, leg cramps and rarely, heart attacks. I understand that all tests will be performed by qualified personnel.

I have read the above and believe I understand it. All questions that have occurred to me have been answered to my satisfaction. I understand that I may ask additional questions, or withdraw from the program (or any part of it), at any time.

Dated at this day of , 198 .

Signed:

Signature of parent or guardian (if under 18 years):

Witnessed:

Ontario

Ministry of
Tourism and
Recreation

Province of Ontario
Queen's Park
Toronto, Canada
M7A 2E1

Hon. Reuben C. Baetz
Minister
John R. Sloan
Deputy Minister

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